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SERVING CANADIANS
AU SERVICE DES CANADIENS

BILL C-10

PROJET DE LOI C-10

SAFE STREETS AND COMMUNITIES ACT

LOI SUR LA SÉCURITÉ DES RUES ET DE COMMUNAUTÉS

CLAUSE BY CLAUSE

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CLAUSE 1

PRESENT SECTION

Not applicable

PROPOSED SECTION

1. This Act may be cited as the *Safe Streets and Communities Act.*

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CLAUSE 1

SUBJECT AND EFFECT

The proposed amendment would name these amendments as the *Safe Streets for Communities Act.*

REASON FOR CHANGE

Not applicable.

RELATED CLAUSE

None

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CLAUSE 2 (PREAMBLE, INTERPRETATION AND PURPOSE)

PRESENT SUBSECTION

Not applicable

PROPOSED SUBSECTION

JUSTICE FOR VICTIMS OF TERRORISM ACT

ENACTMENT OF ACT

2. The *Justice for Victims of Terrorism Act* is enacted as follows:

An Act to deter acts of terrorism against Canada and Canadians

Whereas Canadians and people everywhere are entitled to live their lives in peace, freedom and security;

Whereas Parliament recognizes that terrorism is a matter of national concern that affects the security of the nation and considers it a priority to deter and prevent acts of terrorism against Canada and Canadians;

Whereas acts of terrorism threaten Canada's political institutions, the stability of the economy and the general welfare of the nation;

Whereas the challenge of eradicating terrorism, with its sophisticated and trans-border nature, requires enhanced international cooperation and a strengthening of Canada's capacity to suppress and incapacitate acts of terrorism;

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Whereas United Nations Security Council Resolution 1373 (2001) reaffirms that acts of international terrorism constitute a threat to international peace and security, and reaffirms the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by acts of terrorism;

Whereas Canada ratified the 1999 International Convention for the Suppression of t 15, 2002;

Whereas hundreds of Canadians have been murdered or injured in terrorist attacks

Whereas terrorism is dependent on financial and material support;

Whereas certain states that support terrorism should not benefit from state immunity in this regard;

And whereas Parliament considers that it is in the public interest to enable plaintiffs to bring lawsuits against terrorists and their supporters, which will have the effect of impairing the functioning of terrorist groups in order to deter and prevent acts of terrorism against Canada and Canadians;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

1. This Act may be cited as the *Justice for Victims of Terrorism Act*.

INTERPRETATION

2. The following definitions apply in this Act.

"foreign state" has the same meaning as in section 2 of the *State Immunity Act*.

"listed entity" has the same meaning as in subsection 83.01(1) of the *Criminal Code*.

"person" includes an organization as defined in section 2 of the *Criminal Code*.

PURPOSE

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3. The purpose of this Act is to deter terrorism by establishing a cause of action that allows victims of terrorism to sue perpetrators of terrorism and their supporters.

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CLAUSE 2 (PREAMBLE, INTERPRETATION AND PURPOSE)

SUBJECT AND EFFECT

The preamble underlines the threat posed by terrorism and the need to continue efforts to deter it and to help ensure the security of Canadians, both at home and abroad.

The new Act will be entitled, the *Justice for Victims of Terrorism Act*.

Section 2 of the *State Immunity Act* states that a "foreign state" includes:

> a) any sovereign or other head of the foreign state or of any political subdivision of the foreign state while acting as such in a public capacity;
>
> b) any government of the foreign state or of any political subdivision of the foreign state, including any of its departments, and any agency of the foreign state; and
>
> c) any political subdivision of the foreign state.

This interpretation of "listed entity" refers to the definition of "listed entities" found in Part II (Terrorism) of the *Criminal Code*: "'terrorist entity' means an entity on a list established by the Governor in Council under section 83.05."

Specifically, section 83.05 authorizes the Governor in Council to list, based on the recommendation of the Minister of Public Safety and Emergency Preparedness, any entity if the Government in Council is satisfied that there are reasonable grounds to believe that:

> a) the entity knowingly carried out, attempted to carry out, participated in or facilitated a terrorist act; or
>
> b) the entity is knowingly acting on behalf of, at the direction of or in association with an entity referred to in paragraph a).

There are currently 44 entities listed pursuant to section 83.05 of the *Criminal Code*. The list of entities is publicly available on the Department of Public Safety's website.

The term "person" is used to identify who can sue and be sued under the proposed cause of action.

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Section 2 of the *Criminal Code* provides, in part, that "every one", "person," and "owner" and similar expressions include an organization.

Section 2 of the *Criminal Code* defines an "organization" as:

a) a public body, body corporate, society, company, firm, partnership, trade union or municipality; or

b) an association of persons that

i) is created for a common purpose;

ii) has an operational structure; and

iii) holds itself out to the public as an association of persons.

Subsection 35(1) of the *Interpretation Act* also defines "person" or any word or expression descriptive of a person to include a corporation.

As a result, the term "person" is not restricted to mean just an individual, but is defined inclusively, so that it can also include, for example, an organization as defined in section 2 of the *Criminal Code* or a corporation.

This Bill complements existing counter-terrorism measures and demonstrates Canada's leadership in the fight against terrorism.

Not only would the Act allow victims of terrorism to sue perpetrators of terrorism, but it would also allow them to seek redress from supporters of terrorism, thus demonstrating Canada's resolve to hold both terrorists and those who support them accountable for their actions.

Indeed, the scale and sophistication of the activities conducted by terrorists in recent years have increased their need for financial resources which has led them to seek support from other entities, including states.

The Bill, through its proposed amendment to section 12 of the *State Immunity Act*, authorizes certain defendant assets to be subject to attachment and/or execution in satisfaction of a judgment for successful plaintiffs. In this way, it seeks to deter terrorism.

REASON FOR CHANGE

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RELATED CLAUSE

Clause 7(2)

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CLAUSE 2 (CAUSE OF ACTION) (as passed by the House of Commons)

PRESENT SUBSECTION

Not applicable

PROPOSED SUBSECTION

4. (1) Any person that has suffered loss or damage in or outside Canada on or after January 1, 1985 as a result of an act or omission that is, or had it been committed in Canada would be, punishable under Part II.1 of the *Criminal Code*, may, in any court of competent jurisdiction, bring an action to recover an amount equal to the loss or damage proved to have been suffered by the person and obtain any additional amount that the court may allow, from any of the following:

(*a*) any listed entity or other person that committed the Act or omission that resulted in the loss or damage; or

(*b*) a foreign state or listed entity or other person that – for the benefit of or otherwise in relation to the listed entity referred to in paragraph (*a*) – committed an act or omission that is, or had it been committed in Canada would be, punishable under any of sections 83.02 to 83.04 and 83.18 to 83.23 of the *Criminal Code*.

(2) A court may hear and determine the action referred to in subsection (1) only if the action has a real and substantial connection to Canada or the plaintiff is a Canadian citizen or a permanent resident as defined in subsection 2(1) of the *Immigration and Refugee Protection Act*.

(2.1) In an action under subsection (1), the defendant is presumed to have committed the act or omission that resulted in the loss or damage to the plaintiff if the court finds that

(*a*) a listed entity caused or contributed to the loss or damage by committing an act or omission that is, or had it been committed in Canada would be, punishable under Part II.1 of the Criminal Code; and

(*b*) the defendant – for the benefit of or otherwise in relation to the listed entity referred to in paragraph (a) – committed an act or omission that is, or had it been committed in Canada would be, punishable under any of sections 83.02 to 83.04 and 83.18 to 83.23 of the *Criminal Code*.

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(3) A limitation or prescription period in respect of an action brought under subsection (1) does not begin before the day on which this section comes into force and is suspended during any period in which the person that suffered the loss or damage

(*a*) is incapable of beginning the action because of any physical, mental or psychological condition; or

(*b*) is unable to ascertain the identity of the listed entity, person or foreign state referred to in paragraph (1)(*a*) or (*b*).

(4) The court may refuse to hear a claim against a foreign state under subsection (1) if the loss or damage to the plaintiff occurred in the foreign state and the plaintiff has not given the foreign state a reasonable opportunity to submit the dispute to arbitration in accordance with accepted international rules of arbitration.

(5) A court of competent jurisdiction must recognize a judgment of a foreign court that, in addition to meeting the criteria under Canadian law for being recognized in Canada, is in favour of a person that has suffered loss or damage referred to in subsection (1). However, if the judgment is against a foreign state, that state must be set out on the list referred to in subsection 6.1(2) of the *State Immunity Act* for the judgment to be recognized.

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CLAUSE 2 (CAUSE OF ACTION) (as passed by the House of Commons)

SUBJECT AND EFFECT

Section 4(1) of the new Act creates the cause of action. Specifically, it sets up key parameters, identifying, among other things:

Who can sue

Any person who was victim of a terrorist act can sue to recover amounts equal to loss or damages suffered, and in addition to any amount the court would propose to award. It should be noted that this could include persons who have not suffered direct physical damages.

Who can be sued

Paragraph 4(1)(a) of the new Act reiterates that perpetrators of terrorist acts, including persons and listed terrorist entities, can be sued. Paragraph 4(1)(b) notes that any listed entity or other person who provided support to a listed entity that committed a terrorist act can also be sued, as well as states designated by the Government as having provided support to a listed entity that committed a terrorist act. This paragraph refers to specific *Criminal Code* provisions addressing financing of terrorism, participating in, facilitating, or instructing in terrorism and harbouring terrorists.

As per the definition, "person" would also include organizations.

Where they can sue

This subsection also notes that plaintiffs can file a suit in a court of competent jurisdiction, which in this context, would be a provincial superior court of Canada.

Retroactivity

Subsection 4.1(1) of the Act also states that any victim of a terrorist act committed on or after 1 January 1985 could sue the perpetrator of the act, or its supporters. The Bill is thus retroactive to that date.

Subsection 4(2) provides that the only matters that can be heard by courts are those that have a real and substantial connection to Canada, or those that are brought forward by Canadian citizens or permanent residents.

For those who are not Canadian citizens or permanent residents, courts will do the assessment of the connection between an action and Canada on a case-by-case basis by considering factors such as the link between Canada and the

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plaintiff's claim, the defendant, and other parties involved in the suit. Courts would also assess the fairness to parties involved in the suit when determining whether to hear a case or not.

Subsection 4(2.1) establishes that the defendant is presumed to be liable if it supported a listed entity that caused or contributed to the loss or damage subject to a cause of action. This presumption could be refuted if the defendant proved that he did not cause or contribute to the loss or damage in question. This subsection lightens the burden of proof on victims of terrorism by creating this presumption of causation of damage.

Subsection 4(3) of the new Act provides that any limitation or prescription period in respect of an action brought under this subsection (found in provincial legislation) would only begin when this Act comes into force. Also, these limitations would be suspended if the plaintiff were incapable of beginning the action because of any physical, mental or psychological condition or if the plaintiff were unable to identify either the perpetrator of the *Terrorist Act*, or its supporter(s).

Subsection 4(4) of the Act gives the courts the right to refuse initiating proceedings against a foreign state if the events leading to the cause of action occurred on the state's territory and the court assesses that the plaintiff has not given the state in question the opportunity to resolve the issue through arbitration.

Accepted rules of arbitration may be established under the authority of organizations, such as the United Nations Commission on International Trade Law. They may also be drawn from the rules of established institutions of arbitration, such as the London Court of International Arbitration or the International Chamber of Commerce.

Subsection 4(5) of the Act would require Canadian courts to recognize foreign judgments in favour of a victim of terrorism provided that criteria under Canadian law for recognizing foreign judgments in Canada are met in each case. If the judgment is against a foreign state, the courts could only recognize those against states that are listed as supporters of terrorism.

Indeed, plaintiffs who receive a successful judgment abroad may wish to have them recognized by a Canadian court if the defendant has assets or property under Canadian jurisdiction.

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REASON FOR CHANGE

This clause creates the cause of action to allow victims of terrorism to sue those who committed acts of terrorism and those who supported them.

RELATED CLAUSE

None

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CLAUSE 3

PRESENT SUBSECTION

3. DÉFINITIONS

PROPOSED SUBSECTION

AMENDMENTS TO THE STATE IMMUNITY ACT

3. The heading before section 2 of the French version of the *State Immunity Act* is replaced by the following:

DEFINITIONS ET INTERPRÉTATION

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CLAUSE 3

SUBJECT AND EFFECT

This clause clarifies the French version only to mirror the English.

REASON FOR CHANGE

RELATED CLAUSE

None

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CLAUSE 4

PRESENT SUBSECTION

Not applicable

PROPOSED SUBSECTION

4. The Act is amended by adding the following after section 2:

2. (1) For the purposes of this Act, a foreign state supports terrorism if it commits, for the benefit of or otherwise in relation to a listed entity as defined in subsection 83.01(1) of the *Criminal Code*, an act or omission that is, or had it been committed in Canada would be, punishable under any of sections 83.02 to 83.04 and 83.18 to 83.23 of the *Criminal Code*.

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CLAUSE 4

SUBJECT AND EFFECT

This section defines what the Bill considers to be support of terrorism by a foreign state.

The basis of this definition is two-fold.

First, the conduct (i.e. an act or omission) committed by the foreign state must be for the benefit of or otherwise in relation to a listed entity, or, in other words, an entity listed under subsection 83.05(1) of the *Criminal Code*. There are currently 44 listed terrorist entities.

Second, the conduct of the foreign state must fall within the ambit of any one of the following terrorism offences in the *Criminal Code*:

- Section 83.02: Directly or indirectly, wilfully and without lawful justification or excuse, providing or collecting property intending that it be used or knowing that it will be used in order to carry out, in part, an act or omission intended to cause death or serious bodily harm to a person for the purpose of intimidating the public, etc.

- Section 83.03: Directly or indirectly collecting property, providing or inviting a person to provide or make available property or financial or other related services, in part, intending that they be used or knowing that they will be used for the purpose of facilitating or carrying out any terrorist activity.

- Section 83.04: Using property, directly or indirectly, for the purpose of facilitating or carrying out a terrorist activity or possessing property intending that it be used or knowing that it will be used for the purpose of facilitating or carrying out a terrorist activity.

- Section 83.18: Knowingly participating in or contributing to, directly or indirectly, any activity of a terrorist group for the purpose of enhancing the ability of any terrorist group to facilitate or carry out a terrorist activity.

- Section 83.19: Knowingly facilitating a terrorist activity.

- Section 83.2: Committing an indictable offence for the benefit of, at the direction of, or in association with a terrorist group.

- Section 83.21: Knowingly instructing, directly or indirectly, any person to carry out any activity for the benefit of, at the direction of, or in association

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with a terrorist group, for the purpose of enhancing the ability of any terrorist group to facilitate or carry out a terrorist activity.

- Section 83.22: Knowingly instructing, directly or indirectly, any person to carry out a terrorist activity.

- Section 83.23: Knowingly harbouring or concealing any person known to be a person who has carried out or is likely to carry out a terrorist activity for the purpose of enabling the person to facilitate or carry out any terrorist activity.

RELATED CLAUSE

Clause 5

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CLAUSE 5

PRESENT SUBSECTION

6. A foreign state is not immune from the jurisdiction of a court in any proceedings that relate to

(*a*) any death or personal or bodily injury, or

(*b*) any damage to or loss of property that occurs in Canada.

PROPOSED SUBSECTION

5. The Act is amended by adding the following after section 6:

6.1 (1) A foreign state that is set out on the list referred to in subsection (2) is not immune from the jurisdiction of a court in proceedings against it for its support of terrorism on or after January 1, 1985.

(2) The Governor in Council may, by order, establish a list on which the Governor in Council may, at any time, set out the name of a foreign state if, on the recommendation of the Minister of Foreign Affairs made after consulting with the Minister of Public Safety and Emergency Preparedness, the Governor in Council is satisfied that there are reasonable grounds to believe that the foreign state supported or supports terrorism.

(3) The list must be established no later than six months after the day on which this section comes into force.

(4) On application in writing by a foreign state, the Minister of Foreign Affairs must, after consulting with the Minister of Public Safety and Emergency Preparedness, decide whether there are reasonable grounds to recommend to the Governor in Council that the applicant no longer be set out on the list.

(5) The Minister must without delay give notice to the applicant of the Minister's decision respecting the application.

(6) A foreign state set out on the list may not make another application under subsection (4), unless there has been a material change in its circumstances since the foreign state made its last application or the Minister has completed the review under subsection (7).

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(7) Two years after the establishment of the list, and every two years after that, the Minister of Foreign Affairs must

(*a*) review the list in consultation with the Minister of Public Safety and Emergency Preparedness to determine whether there are still reasonable grounds, as set out in subsection (2), for a foreign state to be set out on the list and make a recommendation to the Governor in Council as to whether the foreign state should remain set out on the list; and

(*b*) review the list in consultation with the Minister of Public Safety and Emergency Preparedness to determine whether there are reasonable grounds, as set out in subsection (2), for a foreign state that is not set out on the list to be set out on the list and make a recommendation to the Governor in Council as to whether the foreign state should be set out on the list.

(8) The review does not affect the validity of the list.

(9) The Minister must complete the review as soon as feasible, but in any case within 120 days, after its commencement. After completing the review, the Minister must without delay cause a notice to be published in the *Canada Gazette* that it has been completed.

(10) If proceedings for support of terrorism are commenced against a foreign state that is set out on the list, the subsequent removal of the foreign state from the list does not have the effect of restoring the state's immunity from the jurisdiction of a court in respect of those proceedings or any related appeal or enforcement proceedings.

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CLAUSE 5

SUBJECT AND EFFECT

(1) This section amends the *State Immunity Act* so that states on the list created by the Governor in Council cannot invoke state immunity if they are being sued for having supported (or supporting) a listed terrorist entity that committed a terrorist act on or after 1 January 1985.

However, a state will retain immunity if it is sued on grounds other than support of terrorism unless another exception to state immunity, such as commercial activities, applies.

(2) This section sets out the mechanism by which a state's immunity for support of terrorism would be lifted. It would provide the authority to the Governor in Council to create a list that identifies those foreign states believed to support (or to have supported) terrorism. To do so, the Governor in Council would need to be satisfied that there are reasonable grounds to believe that the foreign state has provided or continues to provide support to a terrorist entity listed pursuant to the *Criminal Code*. This section specifies that the Governor in Council can add the name of a foreign state at any time.

This section also indicates that prior to making a recommendation to the Governor in Council, the Minister of Foreign Affairs would need to consult with the Minister of Public Safety.

(3) This section specifies that this list would need to be created within six months of the coming to force of this section. This provision will ensure that the list will be established within a reasonable timeline.

(4) A foreign state may apply to be removed from the list of states that support or supported terrorism.

The decision to remove the state from the list or not will be taken by the Governor in Council upon the recommendation of the Minister of Foreign Affairs, who must first consult with the Minister of Public Safety.

(5) Should a state submit an application to be removed from the list of state-supporters of terrorism, the Minister of Foreign Affairs must decide whether to recommend to the Governor in Council the removal of this state from the list.

The Minister of Foreign Affairs must notify the state applicant of his/her recommendation to the Governor in Council without delay.

(6) A foreign state could not re-apply to be de-listed unless:

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- it could show that is circumstances have changed since the last application by demonstrating, for example, that it has completely ceased any form of support of terrorism; or

- the Minister would have since then completed the mandated two-year review of the whole list.

The purpose of this provision is to avoid the potential abusive use of the de-listing process by foreign states listed as supporters of terrorism, while providing a reasonable opportunity for such states to seek de-listing.

(7) This section stipulates that the list of foreign states that support (or supported) terrorism established by the Bill would be reviewed every two years by the Minister of Foreign Affairs in consultation with the Minister of Public Safety. Ministers will also review, every two years, non-listed states to determine whether any non-listed states should be added to the list.

Once the Minister of Foreign Affairs has reviewed the list, the Minister must then make a recommendation to the Governor in Council as to whether listed state-supporters of terrorism should remain on the list or whether any non-listed state be added to the list.

If the Minister of Foreign Affairs recommends that a state be de-listed (i.e. that it should not remain on the list), and if the Governor in Council concurs, the list of state-supporters of terrorism would need to be amended accordingly.

(8) This section stipulates that the list remains in effect while the Ministers conduct the two-year review of the list.

(9) This section is modelled on subsection 83.05(10) of the *Criminal Code* in respect of the review of listed entities found therein.

This section sets out a limit of 120 days for the Minister to complete the review, and specifies that a notice of its completion must be published in the *Canada Gazette*, thus making the list available to the public.

(10) This section stipulates that if a state is removed from the list while litigation is in process, the suit would be allowed to proceed to its completed as the state would still not benefit from immunity. The intent of this section is to protect the interests of litigants who have already launched a civil action against a listed state from being undermined by its removal from the list of states-supporters of terrorism.

REASON FOR CHANGE

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RELATED CLAUSES

Clauses 4, 6, 7, 8 and 9

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CLAUSE 6

PRESENT SUBSECTION

11. (3) This section does not apply to an agency of a foreign state.

PROPOSED SUBSECTION

6. Subsection 11(3) of the Act is replaced by the following:

(3) This section does not apply either to an agency of a foreign state or to a foreign state that is set out on the list referred to in subsection 6.1(2) in respect of an action brought against that foreign state for its support of terrorism.

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CLAUSE 6

SUBJECT AND EFFECT

Subsection 11(1) of the *State Immunity Act* states that: "subject to subsection (3) no relief by way of an injunction, specific performance or the recovery of land or other property may be granted against a foreign state unless the state consents in writing to that relief and, where the state so consents, the relief granted shall not be greater than that consented to by the state." In other words, this subsection specifies that no property of a foreign state may be recovered unless that state consents to it. Subsection 11(3) of the Act provides that this immunity "does not apply to an agency of the foreign state."

The proposed amendment of this Bill would modify subsection 11(3) to add that a foreign state that is listed as a state that supported or supports terrorism is also excluded from the immunity provided by subsection 11(1) in respect of an action brought against that foreign state for its support of terrorism. Therefore, a successful plaintiff could ask the court for an injunction, specific performance or recover land or property against a listed state, where the judgment either is rendered in Canada or recognized in a Canadian court.

REASON FOR CHANGE

RELATED CLAUSE

Clause 5

Released under the Access to Information Act /
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CLAUSE 7

PRESENT SUBSECTION

12. (1) Subject to subsections (2) and (3), property of a foreign state that is located in Canada is immune from attachment and execution and, in the case of an action *in rem*, from arrest, detention, seizure and forfeiture except where

(*a*) the state has, either explicitly or by implication, waived its immunity from attachment, execution, arrest, detention, seizure or forfeiture, unless the foreign state has withdrawn the waiver of immunity in accordance with any term thereof that permits such withdrawal;

(*b*) the property is used or is intended for a commercial activity; or

(*c*) the execution relates to a judgment establishing rights in property that has been acquired by succession or gift or in immovable property located in Canada.

PROPOSED SUBSECTION

7. (1) **Paragraph 12(1)(*b*) of the Act is replaced by the following:**

(*b*) the property is used or is intended to be used for a commercial activity or, if the foreign state is set out on the list referred to in subsection 6.1(2), is used or is intended to be used by it to support terrorism.

(2) **Subsection 12(1) of the Act is amended by adding "or" at the end of paragraph (*c*) and by adding the following after that paragraph:**

(*d*) the foreign state is set out on the list referred to in subsection 6.1(2) and the attachment or execution relates to a judgment rendered in an action brought against it for its support of terrorism and to property other than property that has cultural or historical value.

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CLAUSE 7

SUBJECT AND EFFECT

Subsection 12(1) of the *State Immunity Act* indicates that the property of a foreign state in Canada cannot be seized in the context of a lawsuit except in certain circumstances, including when the property is used or intended to be used for commercial activities.

Paragraph 12(1)(b) would be amended so that property under Canadian jurisdiction of a listed state that is used or intended to be used to support terrorism would also no longer be immune, and, therefore, could be seized in the course of the procedure as an interim measure or in the context of a successful lawsuit, where the judgment either is rendered in Canada or recognized in a Canadian court.

The Bill would add a new circumstance where the property of a foreign state could be seized (paragraph (d)), namely when:

1) the state is listed as a supporter of terrorism; and

2) the remedy is executed to satisfy a judgment issued against the state for its support of terrorism.

This section, however, states that property that has cultural or historical value could not be seized. Courts would be responsible to determine whether the property has such value.

REASON FOR CHANGE

RELATED CLAUSE

Clause 5

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CLAUSE 8

PRESENT SUBSECTION

Not applicable

PROPOSED SUBSECTION

8. The Act is amended by adding the following after section 12:

12.1(1) At the request of any party in whose favour a judgment is rendered against a foreign state in proceedings referred to in section 6.1, the Minister of Finance or the Minister of Foreign Affairs may, within the confines of his or her mandate, assist, to the extent that is reasonably practical, any judgment creditor in identifying and locating the following property, unless the Minister of Foreign Affairs believes that to do so would be injurious to Canada's international relations or either Minister believes that to do so would be injurious to Canada's other interests:

(*a*) in the case of the Minister of Finance, the financial assets of the foreign state that are held within Canadian jurisdiction; and

(*b*) in the case of the Minister of Foreign Affairs, the property of the foreign state that is situated in Canada.

(2) In exercising the power referred to in subsection (1), the Minister of Finance or the Minister of Foreign Affairs, as the case may be, may not disclose

(*a*) information that was produced in or for a government institution, without the authorization of the government institution; and

(*b*) information produced in circumstances other than those referred to in paragraph (a), without the authorization of the government institution that first received the information.

(3) In subsection (2), "government institution" means any department, branch, office, board, agency, commission, corporation or other body for the administration or affairs of which a minister is accountable to Parliament.

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CLAUSE 8

SUBJECT AND EFFECT

At the request of a successful plaintiff, the Minister of Finance and the Minister of Foreign Affairs could assist in identifying and locating the financial assets and property under Canadian jurisdiction of the foreign state against which a judgment has been rendered. The Ministers would have the discretion to deny assistance if providing assistance could be injurious to Canada's international interest or other interests.

If Ministers choose to provide assistance, they would be required to do so within the confines of their mandates and to the extent reasonably practical.

Subsection (2) specifies that the Ministers of Finance and/or Foreign Affairs may not release information from a government institution without its express permission when assisting successful plaintiffs.

Subsection (3) defines what is meant by a "government institution." It includes any department, branch, office, board, agency, commission, corporation or other body for the administration or affairs of which a minister is accountable to Parliament.

REASON FOR CHANGE

RELATED CLAUSE

Clause 5

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CLAUSE 9

PRESENT SUBSECTION

13. (2) Subsection (1) does not apply to an agency of a foreign state.

PROPOSED SUBSECTION

9. Subsection 13(2) of the Act is replaced by the following:

(2) Subsection (1) does not apply either to an agency of a foreign state or to a foreign state that is set out on the list referred to in subsection 6.1(2) in respect of an action brought against that foreign state for its support of terrorism.

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CLAUSE 9

SUBJECT AND EFFECT

Subsection 13(1) of the *State Immunity Act* states that: "No penalty or fine may be imposed by a court against a foreign state for any failure or refusal by the state to produce any document or other information in the course of proceedings before the court." Subsection 13(2) specifies that this subsection does not apply to an agency of a foreign state.

The Bill's proposed amendment would add that subsection 13(1) does not apply to listed foreign states, i.e., those states listed because the Governor in Council s satisfied that there are reasonable grounds to believe that they support (or supported) terrorism. Therefore, the effect of the proposed amendment would be that the court could impose penalties or fines against a listed foreign state for failure or refusal to produce any document or other information in the course of proceedings before the court.

REASON FOR CHANGE

RELATED CLAUSE

Clause 5

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CLAUSE 10

PRESENT SECTION

7. (4.1) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that if committed in Canada would be an offence against section 151, 152, 153, 155 or 159, subsection 160(2) or (3), section 163.1, 170, 171 or 173 or subsection 212(4) shall be deemed to commit that act or omission in Canada if the person who commits the act or omission is a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*.

PROPOSED SECTION

SENTENCING

CRIMINAL CODE

10. Subsection 7(4.1) of the *Criminal Code* is amended by replacing "171" with "171, 171.1, 172.1, 172.2".

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CLAUSE 10

SUBJECT AND EFFECT

The proposed amendment would replace the subsection's reference to section 171 (Householder permitting sexual activity) with sections 171 (Householder permitting sexual activity), 171.1 (Making sexually explicit material available to child), 172.1 (Luring a child), and 172.2 (Agreement or arrangement – sexual offence child).

Subsection 7(4.1) addresses the practice commonly referred to as "child sex tourism" namely, where nationals of one country travel to another country and engage in unlawful sexual activity with a child. The effect of the amendment would be to provide extra-territorial jurisdiction for the Canadian prosecution of a Canadian citizen or permanent resident who, while outside of the country, commits an offence which, if committed in Canada, would constitute an offence under one of the subsection's enumerated child sexual offences.

REASON FOR CHANGE

The amendment broadens Canada's "child sex tourism" law to apply to three new child sexual offences: the two new child sexual offences proposed by this Bill as well as the existing Luring a child offence (section 172.1).

RELATED CLAUSES

Clauses 21, 22 and 23

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CLAUSE 11

PRESENT SECTION

151. Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 years:

(*a*) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of forty-five days; or

(*b*) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of fourteen days.

PROPOSED SECTION

11. Paragraphs 151*(a)* and (*b)* of the Act are replaced by the following:

(*a*) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year; or

(*b*) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days.

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CLAUSE 11

SUBJECT AND EFFECT

The proposed amendment would increase the minimum penalty of imprisonment for sexual interference from 14 to 90 days when proceeded by way of summary conviction and from 45 days to 1 year when proceeded on indictment.

REASON FOR CHANGE

The proposed amendment would increase the minimum penalties of imprisonment to better reflect the serious nature of the offence. It would also provide greater coherence to all mandatory minimum penalties for child sexual offences: hybrid offences punishable by a maximum of 18 months on summary conviction and by a maximum of 10 years on indictment would carry mandatory minimum penalties of 90 days and 1 year imprisonment respectively.

RELATED CLAUSES

Clauses 12, 13, 15, 17, 21, 22, 23 and 25

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CLAUSE 12

PRESENT SECTION

152. Every person who, for a sexual purpose, invites, counsels or incites a person under the age of 16 years to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the person under the age of 16 years:

(*a*) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of forty-five days; or

(*b*) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of fourteen days.

PROPOSED SECTION

12. Paragraphs 152*(a)* and (*b)* of the Act are replaced by the following:

(*a*) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year; or

(*b*) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days.

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CLAUSE 12

SUBJECT AND EFFECT

The proposed amendment would increase the minimum penalty of imprisonment for invitation to sexual touching from 14 to 90 days when proceeded by way of summary conviction and from 45 days to 1 year when proceeded by way of indictment.

REASON FOR CHANGE

The proposed amendment would increase the minimum penalties of imprisonment to better reflect the serious nature of the offence. It would also provide greater coherence to all mandatory minimum penalties for child sexual offences: hybrid offences punishable by a maximum of 18 months on summary conviction and by a maximum of 10 years on indictment would carry mandatory minimum penalties of 90 days and 1 year imprisonment respectively.

RELATED CLAUSES

Clauses 11, 13, 15, 17, 21, 22, 23 and 25

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CLAUSE 13

PRESENT SECTION

153. (1) Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency or who is in a relationship with a young person that is exploitative of the young person, and who

(*a*) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person; or

(*b*) for a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person.

(1.1) Every person who commits an offence under subsection (1)

(*a*) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of forty-five days; or

(*b*) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of fourteen days.

PROPOSED SECTION

13. Paragraphs 153(1.1)*(a)* and (*b)* of the Act are replaced by the following:

(*a*) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year; or

(*b*) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days.

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CLAUSE 13

SUBJECT AND EFFECT

The proposed amendment would increase the minimum penalty of imprisonment for sexual exploitation from 14 to 90 days when proceeded by way of summary conviction and from 45 days to 1 year when proceeded by way of indictment.

REASON FOR CHANGE

The proposed amendment would increase the minimum penalties of imprisonment to better reflect the serious nature of the offence. It would also provide greater coherence to all mandatory minimum penalties for child sexual offences: hybrid offences punishable by a maximum of 18 months on summary conviction and by a maximum of 10 years on indictment would carry mandatory minimum penalties of 90 days and 1 year imprisonment respectively.

RELATED CLAUSES

Clauses 11, 12, 15, 17, 21, 22, 23 and 25

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CLAUSE 14

PRESENT SECTION

155. (1) Every one commits incest who, knowing that another person is by blood relationship his or her parent, child, brother, sister, grandparent or grandchild, as the case may be, has sexual intercourse with that person.

(2) Every one who commits incest is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

PROPOSED SECTION

14. Subsection 155(2) of the Act is replaced by the following:

(2) Everyone who commits incest is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years and, if the other person is under the age of 16 years, to a minimum punishment of imprisonment for a term of five years.

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CLAUSE 14

SUBJECT AND EFFECT

The proposed amendment would impose a minimum penalty of five years imprisonment for incest where the victim is under the age of 16 years.

REASON FOR CHANGE

The proposed amendment would impose a mandatory minimum sentence for the offence of incest where the victim is a child to better reflect the serious nature of the offence. It would also provide greater coherence to all mandatory minimum penalties for child sexual offences: offences punishable by a maximum of 14 years would carry a mandatory minimum penalty of 5 years imprisonment.

RELATED CLAUSES

Clauses 26 and 27

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CLAUSE 15

PRESENT SECTION

160(3) Notwithstanding subsection (1), every person who, in the presence of a person under the age of 16 years, commits bestiality or who incites a person under the age of 16 years to commit bestiality is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.

PROPOSED SECTION

15. Subsection 160(3) of the Act is replaced by the following:

(3) Despite subsection (1), every person who commits bestiality in the presence of a person under the age of 16 years, or who incites a person under the age of 16 years to commit bestiality,

(*a*) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year; or

(*b*) is guilty of an offence punishable on summary conviction and is liable to imprisonment of not more than two years less a day and to a minimum punishment of imprisonment for a term of six months.

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CLAUSE 15

SUBJECT AND EFFECT

The proposed amendment would increase the maximum penalty on summary conviction from six months to two years less a day. It would also impose a minimum penalty of imprisonment for bestiality committed in the presence of a young person or for inciting a young person to commit bestiality, of six months when proceeded by way of summary conviction and 1 year when proceeded by way of indictment.

REASON FOR CHANGE

The maximum penalty on summary conviction is increased from six months to two years less a day to reflect the particularly heinous nature of the offence. The proposed amendment would also impose minimum penalties of imprisonment to provide greater coherence to all mandatory minimum penalties for child sexual offences: hybrid offences punishable by a maximum of 6 months on summary conviction and by a maximum of 10 years on indictment would carry mandatory minimum penalties of six months and 1 year imprisonment respectively; and hybrid offences punishable by a maximum of two years less a day on summary conviction would be punishable by a minimum penalty of six months imprisonment.

RELATED CLAUSES

Clauses 11, 12, 13, 22, 23 and 25

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CLAUSE 16

PRESENT SECTION

161(1) When an offender is convicted, or is discharged on the conditions prescribed in a probation order under section 730, of an offence referred to in subsection (1.1) in respect of a person who is under the age of 16 years, the court that sentences the offender or directs that the accused be discharged, as the case may be, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, shall consider making and may make, subject to the conditions or exemptions that the court directs, an order prohibiting the offender from

(*a*) attending a public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, school ground, playground or community centre;

(*b*) seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity, that involves being in a position of trust or authority towards persons under the age of 16 years; or

(*c*) using a computer system within the meaning of subsection 342.1(2) for the purpose of communicating with a person under the age of 16 years.

(1.1) The offences for the purpose of subsection (1) are

(*a*) an offence under section 151, 152, 155 or 159, subsection 160(2) or (3), section 163.1, 170, 171 or 172.1, subsection 173(2) or section 271, 272, 273 or 281;

(*b*) an offence under section 144 (rape), 145 (attempt to commit rape), 149 (indecent assault on female), 156 (indecent assault on male) or 245 (common assault) or subsection 246(1) (assault with intent) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 4, 1983; or

(*c*) an offence under subsection 146(1) (sexual intercourse with a female under 14) or section 153 (sexual intercourse with step-daughter), 155 (buggery or bestiality), 157 (gross indecency), 166 (parent or guardian procuring defilement) or 167 (householder permitting defilement) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 1, 1988.

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PROPOSED SECTION

16. (1) Subsection 161(1) of the Act is amended by striking out "or" at the end of paragraph (*b*) and by replacing paragraph (*c*) with the following:

(*c*) having any contact — including communicating by any means — with a person who is under the age of 16 years, unless the offender does so under the supervision of a person whom the court considers appropriate; or

(*d*) using the Internet or other digital network, unless the offender does so in accordance with conditions set by the court.

(2) Paragraph 161(1.1)(*a*) of the Act is amended by replacing

(*a*) "171 or 172.1" with "171, 171.1, 172.1 or 172.2";

(*b*) "173(2)" with "173(2) or 212(1), (2), (2.1) or (4)"; and

(*c*) "273 or 281" with "273, 280 or 281".

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CLAUSE 16

SUBJECT AND EFFECT

Section 161 requires a sentencing court to consider imposing a prohibition order against a person convicted of one of the enumerated child sexual offences. Currently, the conditions that a court must consider imposing as part of that prohibition order include those prohibiting attending at places normally frequented by children, holding/seeking paid or volunteer positions involving trust or authority over children, and using a computer system for the purpose of communicating with a child.

The proposed amendment would expand the list of enumerated offences to include the two new offences proposed by this Bill (sections 171.1 – Making Sexually Explicit Material Available to Child and 172.2 – Agreement or Arrangement – Sexual Offence Against Child) as well as four child prostitution offences (subsections 212(1) – Procuring, 212(2) – Living on the avails of prostitution of person under 18 years, 212(2.1) – Aggravated offence in relation to living on the avails of prostitution of person under 18 years, and 212(4) – Offence-Prostitution of person under 18).

The proposed amendment would also require a sentencing court to consider prohibiting a person convicted of one of the enumerated child sexual offences from having any unsupervised contact with a young person under the age of 16 years or from having unsupervised use of the Internet or other digital network.

All other provisions governing prohibition orders under section 161 would remain as they currently exist.

REASON FOR CHANGE

The proposed expansion of the list of enumerated offences for which a prohibition order could be made would ensure consistent treatment of all child sexual offences. In addition to currently being allowed to make such a prohibition order for the existing listed offences, the proposed amendment would also allow this prohibition order to be made against persons convicted under the proposed new offences as well as under any of the child prostitution offences.

The proposed amendment would also specifically direct a sentencing court to consider imposing two new broader conditions at the time of sentencing a person convicted of committing one of the enumerated sexual offences against a child. The proposed conditions seek to prevent the convicted child sex offender from having a future opportunity to sexually assault a young person or from having the

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opportunity to use of the Internet and other digital network to facilitate their sexual offending against young persons.

RELATED CLAUSE

Clause 37

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CLAUSE 17

PRESENT SECTION

163.1(2) Every person who makes, prints, publishes or possesses for the purpose of publication any child pornography is guilty of

(*a*) an indictable offence and liable to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of one year; or

(*b*) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of ninety days.

(3) Every person who transmits, makes available, distributes, sells, advertises, imports, exports or possesses for the purpose of transmission, making available, distribution, sale, advertising or exportation any child pornography is guilty of

(*a*) an indictable offence and liable to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of one year; or

(*b*) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of ninety days.

(4) Every person who possesses any child pornography is guilty of

(*a*) an indictable offence and liable to imprisonment for a term not exceeding five years and to a minimum punishment of imprisonment for a term of forty-five days; or

(*b*) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of fourteen days.

(4.1) Every person who accesses any child pornography is guilty of

(*a*) an indictable offence and liable to imprisonment for a term not exceeding five years and to a minimum punishment of imprisonment for a term of forty-five days; or

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(*b*) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of fourteen days.

PROPOSED SECTION

17. (1) Paragraph 163.1(2)(*b*) of the Act is replaced by the following:

(*b*) an offence punishable on summary conviction and is liable to imprisonment for a term not exceeding two years less a day and to a minimum punishment of imprisonment for a term of six months.

(2) Paragraph 163.1(3)(*b*) of the Act is replaced by the following:

(*b*) an offence punishable on summary conviction and is liable to imprisonment for a term not exceeding two years less a day and to a minimum punishment of imprisonment for a term of six months.

(3) Paragraphs 163.1(4)(*a*) and (*b*) of the Act are replaced by the following:

(*a*) an indictable offence and is liable to imprisonment for a term of not more than five years and to a minimum punishment of imprisonment for a term of six months; or

(*b*) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days.

(4) Paragraphs 163(4.1)(*a*) and (*b*) of the Act are replaced by the following:

(*a*) an indictable offence and is liable to imprisonment for a term of not more than five years and to a minimum punishment of imprisonment for a term of six months; or

(*b*) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days.

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CLAUSE 17

SUBJECT AND EFFECT

The proposed amendment would increase the maximum penalty on summary conviction from 18 months to two years less a day for making child pornography (subsection 163.1(2)) and distributing child pornography (subsection 163.1(3)). The proposed amendment would also increase the minimum penalty of imprisonment for making and distributing child pornography when proceeded by summary conviction from 90 days to six months, and for possessing and accessing child pornography from 14 to 90 days when proceeded by way of summary conviction and from 45 days to 6 months when proceeded by way of indictment.

REASON FOR CHANGE

The maximum penalty on summary conviction for making and distributing child pornography is increased from 18 months to two years less a day to reflect the particularly heinous nature of these offences. The proposed amendment would also increase the minimum penalties of imprisonment to provide greater coherence to all mandatory minimum penalties for child sexual offences: hybrid offences punishable by a maximum of 18 months on summary conviction and by a maximum of 5 years on indictment would carry mandatory minimum penalties of 90 days and 6 months imprisonment respectively; and hybrid offences punishable by a maximum of two years less a day on summary conviction would be punishable by a minimum penalty of six months imprisonment.

RELATED CLAUSES

Clauses 11, 12, 13, 21, 22, 23 and 25

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CLAUSE 18

PRESENT SECTION

164.2(1) On application of the Attorney General, a court that convicts a person of an offence under section 163.1 or 172.1, in addition to any other punishment that it may impose, may order that any thing — other than real property — be forfeited to Her Majesty and disposed of as the Attorney General directs if it is satisfied, on a balance of probabilities, that the thing

(*a*) was used in the commission of the offence; and

(*b*) is the property of

(i) the convicted person or another person who was a party to the offence, or

(ii) a person who acquired the thing from a person referred to in subparagraph (i) under circumstances that give rise to a reasonable inference that it was transferred for the purpose of avoiding forfeiture.

PROPOSED SECTION

18. The portion of subsection 164.2(1) of the Act before paragraph (*a*) is replaced by the following:

164.2 (1) On application of the Attorney General, a court that convicts a person of an offence under section 163.1, 172.1 or 172.2, in addition to any other punishment that it may impose, may order that anything — other than real property — be forfeited to Her Majesty and disposed of as the Attorney General directs if it is satisfied, on a balance of probabilities, that the thing

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CLAUSE 18

SUBJECT AND EFFECT

Section 164.2 empowers a court to order the forfeiture of any thing used and owned by a person to commit an offence under sections 163.1 (child pornography) or 172.1 (Luring a child). The proposed amendment would expand this power of forfeiture to also apply to any thing used to commit an offence under the proposed new offence in section 172.2 - Agreement or arrangement – sexual offence against child.

REASON FOR CHANGE

The commission of an offence under the proposed new section 172.2 would involve the use of a means of telecommunication such as a computer system. Enabling a sentencing court to also order the forfeiture of this property would enhance the penalty of imprisonment for this offence as well as ensure consistent treatment between this and similar offences of Child pornography and Luring a child.

RELATED CLAUSE

Clause 23

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CLAUSE 19

PRESENT SECTION

170. Every parent or guardian of a person under the age of eighteen years who procures the person for the purpose of engaging in any sexual activity prohibited by this Act with a person other than the parent or guardian is guilty of an indictable offence and liable

(*a*) to imprisonment for a term not exceeding five years and to a minimum punishment of imprisonment for a term of six months if the person procured is under the age of 16 years; or

(*b*) to imprisonment for a term not exceeding two years and to a minimum punishment of imprisonment for a term of forty-five days if the person procured is 16 years of age or more but under the age of eighteen years.

PROPOSED SECTION

19. Paragraphs 170(*a*) and (*b*) of the Act are replaced by the following:

(*a*) to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year if the person procured is under the age of 16 years; or

(*b*) to imprisonment for a term of not more than five years and to a minimum punishment of imprisonment for a term of six months if the person procured is 16 years of age or more but under the age of 18 years.

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CLAUSE 19

SUBJECT AND EFFECT

The proposed amendment would increase the minimum and maximum penalties of imprisonment for a parent or guardian procuring unlawful sexual activity: where the young person is under the age of 16 years, the minimum would increase from six months to 1 year and the maximum would increase from 5 to 10 years; and where the young person is aged 16 - 17 years, the minimum would increase from 45 days to six months and the maximum would increase from 2 to 5 years.

REASON FOR CHANGE

The proposed amendment would increase the minimum and maximum penalties of imprisonment to better reflect the serious nature of the offence. It would also provide greater coherence to all mandatory minimum penalties for child sexual offences: offences punishable by a maximum of 5 years would carry a mandatory minimum penalty of 6 months imprisonment and offences punishable by a maximum of 10 years would carry a mandatory minimum penalty of 1 year imprisonment.

RELATED CLAUSES

Clauses 20, 21, 23, 24 and 36

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CLAUSE 20

PRESENT SECTION

171. Every owner, occupier or manager of premises, or any other person who has control of premises or assists in the management or control of premises, who knowingly permits a person under the age of eighteen years to resort to or to be in or on the premises for the purpose of engaging in any sexual activity prohibited by this Act is guilty of an indictable offence and liable

(*a*) to imprisonment for a term not exceeding five years and to a minimum punishment of imprisonment for a term of six months if the person in question is under the age of 16 years; or

(*b*) to imprisonment for a term not exceeding two years and to a minimum punishment of imprisonment for a term of forty-five days if the person is 16 years of age or more but under the age of eighteen years.

PROPOSED SECTION

20. Paragraph 171(*b*) of the Act is replaced by the following:

(*b*) to imprisonment for a term not exceeding two years and to a minimum punishment of imprisonment for a term of 90 days if the person is 16 years of age or more but under the age of 18 years.

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CLAUSE 20

SUBJECT AND EFFECT

The proposed amendment would increase the minimum penalty of imprisonment for a householder who permits unlawful sexual activity with a young person, aged 16 - 17 years, from 45 to 90 days.

REASON FOR CHANGE

The proposed amendment would increase the minimum penalty of imprisonment to better reflect the serious nature of the offence. It would also provide greater coherence to all mandatory minimum penalties for child sexual offences: offences punishable by a maximum of 2 years would carry a mandatory minimum penalty of 90 days imprisonment.

RELATED CLAUSES

Clauses 19, 21, 23, 24, and 36

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CLAUSE 21

PRESENT SECTION

Not applicable

PROPOSED SECTION

21. The Act is amended by adding the following after section 171:

171.1 (1) Every person commits an offence who transmits, makes available, distributes or sells sexually explicit material to

(*a*) a person who is, or who the accused believes is, under the age of 18 years, for the purpose of facilitating the commission of an offence under subsection 153(1), section 155, 163.1, 170 or 171 or subsection 212(1), (2), (2.1) or (4) with respect to that person;

(*b*) a person who is, or who the accused believes is, under the age of 16 years, for the purpose of facilitating the commission of an offence under section 151 or 152, subsection 160(3) or 173(2) or section 271, 272, 273 or 280 with respect to that person; or

(*c*) a person who is, or who the accused believes is, under the age of 14 years, for the purpose of facilitating the commission of an offence under section 281 with respect to that person.

(2) Every person who commits an offence under subsection (1)

(*a*) is guilty of an indictable offence and is liable to imprisonment for a term of not more than two years and to a minimum punishment of imprisonment for a term of 90 days; or

(*b*) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than six months and to a minimum punishment of imprisonment for a term of 30 days.

(3) Evidence that the person referred to in paragraph (1)(*a*), (*b*) or (*c*) was represented to the accused as being under the age of 18, 16 or 14 years, as the case may be, is, in the absence of evidence to the contrary, proof that the accused believed that the person was under that age.

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(4) It is not a defence to a charge under paragraph (1)(*a*), (*b*) or (*c*) that the accused believed that the person referred to in that paragraph was at least 18, 16 or 14 years of age, as the case may be, unless the accused took reasonable steps to ascertain the age of the person.

(5) In subsection (1), "sexually explicit material" means material that is not child pornography, as defined in subsection 163.1(1), and that is

(*a*) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,

(i) that shows a person who is engaged in or is depicted as engaged in explicit sexual activity, or

(ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a person's genital organs or anal region or, if the person is female, her breasts;

(*b*) written material whose dominant characteristic is the description, for a sexual purpose, of explicit sexual activity with a person; or

(*c*) an audio recording whose dominant characteristic is the description, presentation or representation, for a sexual purpose, of explicit sexual activity with a person.

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CLAUSE 21

SUBJECT AND EFFECT

The proposed amendment would create a new offence prohibiting any one from transmitting, making available, distributing or selling sexually explicit material to a young person for the purpose of facilitating the commission of an enumerated sexual or abduction offence against that young person.

The listing of enumerated child sexual and abduction offences in paragraphs (1)(a), (b) and (c) are aligned according to the applicable age limits for these offences: under the age of 18 years for offences listed in (a); under the age of 16 years for offences listed (b), and under the age of 14 years for the offence listed in (c).

"Sexually explicit material" is defined: it excludes child pornography but includes, for example, photographic depictions of a person engaged in explicit sexual activity or of a person's genital organs/anal region/a woman's breasts where these are the dominant characteristic of the depiction and they are so depicted for a sexual purpose. It also includes written material or audio recordings whose dominant characteristic is the description/representation of explicit sexual activity for a sexual purpose. These or similar terms are used in sections 162 (Voyeurism) and 163.1 (Child pornography) and have established meanings as a result of judicial interpretations, including by the Supreme Court of Canada in *R. v. Sharpe* (2001). Similarly, the expression "for the purpose of facilitating the commission" of an enumerated child sexual or abduction offence against a child, as used in section 172.1 (Luring a child) has been interpreted by the Supreme Court of Canada in *R. v. Legare* (2009), as meaning "helping to bring about and making easier or more probable" the commission of an enumerated secondary offence against that young person.

Consistent with all child sexual offences, the proposed new offence provides a presumption that evidence that the young person was represented as being under the age of consent to sexual activity is proof that the accused believed the person to be under the age of consent in the absence of evidence to the contrary. Similarly, the defence of honest but mistaken belief in the age of the young person is not available to an accused unless the accused took reasonable steps to ascertain the age of the young person.

The proposed offence would be a hybrid offence, carrying a minimum penalty of 30 days and a maximum of 6 months imprisonment on summary conviction, and a minimum penalty of 90 days and a maximum of 2 years imprisonment on indictment.

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REASON FOR CHANGE

Child sex offenders commonly provide sexually explicit material to their intended victims, often with a view to lowering the young person's inhibitions and showing the victim that others engage in such activity. Where this material constitutes "child pornography" as defined by section 163.1 of the *Criminal Code*, all activity involving that illicit material (making, distributing, possessing, accessing etc.,) is already prohibited.

However, where this material involves depictions of adults engaged in explicit sexual activity, its distribution or circulation is only currently prohibited if the material constitutes "obscene" material under section 163 (Corrupting morals). Obscenity has been judicially interpreted as applying to depictions of explicit sexual activity coupled with violence or that are judicially determined to be degrading or dehumanizing and, as such, generally only applies to material at the extreme end of the spectrum of such material.

As a result, the obscenity offence does not apply to the type of material and the specific use made of that material that is addressed by the proposed new offence.

The listing of enumerated sexual and abduction offences and their alignment with the applicable ages of consent to sexual activity (and the child abduction offences), as well as the provision of the presumption and defences, will make the offence consistent with section 172.1 (Clause 14) and the proposed offence of section 172.2 (Clause 15).

The proposed imposition of a mandatory minimum sentence for the offence would ensure that it reflects the particular impact of the offence on child victims. It would also provide greater coherence to all mandatory minimum penalties for child sexual offences: hybrid offences punishable by a maximum of 6 months on summary conviction and by a maximum of 2 years on indictment would carry mandatory minimum penalties of 30 and 90 days imprisonment respectively.

RELATED CLAUSES

Clauses 10, 15, 19, 20, 22, 23, 24, 28, 29, 30, 31, 36 and 38

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CLAUSE 22

PRESENT SECTION

172.1 (1) Every person commits an offence who, by means of a computer system within the meaning of subsection 342.1(2), communicates with

(*a*) a person who is, or who the accused believes is, under the age of eighteen years, for the purpose of facilitating the commission of an offence under subsection 153(1), section 155 or 163.1, subsection 212(1) or (4) or section 271, 272 or 273 with respect to that person;

(*b*) a person who is, or who the accused believes is, under the age of 16 years, for the purpose of facilitating the commission of an offence under section 151 or 152, subsection 160(3) or 173(2) or section 280 with respect to that person; or

(*c*) a person who is, or who the accused believes is, under the age of 14 years, for the purpose of facilitating the commission of an offence under section 281 with respect to that person.

(2) Every person who commits an offence under subsection (1) is guilty of

(*a*) an indictable offence and liable to imprisonment for a term of not more than ten years; or

(*b*) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

(3) La preuve que la personne visée aux alinéas (1)*a*), *b*) ou *c*) a été présentée à l'accusé comme ayant moins de dix-huit, seize ou quatorze ans, selon le cas, constitue, sauf preuve contraire, la preuve que l'accusé croyait, au moment de l'infraction présumée, qu'elle avait moins que cet âge.

PROPOSED SECTION

22. (1) The portion of subsection 172.1(1) of the Act before paragraph (*c*) is replaced by the following:

172.1 (1) Every person commits an offence who, by a means of telecommunication, communicates with

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(*a*) a person who is, or who the accused believes is, under the age of 18 years, for the purpose of facilitating the commission of an offence under subsection 153(1), section 155, 163.1, 170 or 171 or subsection 212(1), (2), (2,1) or (4) with respect to that person;

(*b*) a person who is, or who the accused believes is, under the age of 16 years, for the purpose of facilitating the commission of an offence under section 151 or 152, subsection 160(3) or 173(2) or section 271, 272, 273 or 280 with respect to that person; or

(2) Subsection 172.1(2) of the Act are replaced by the following:

(2) Every person who commits an offence under subsection (1)

(*a*) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year; or

(*b*) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days.

(3) Subsection 172.1(3) of the French version of the Act is replaced by the following:

(3) La preuve que la personne visée aux alinéas (1)*a*), *b*) ou *c*) a été présentée à l'accusé comme ayant moins de dix-huit, seize ou quatorze ans, selon le cas, constitue, sauf preuve contraire, la preuve que l'accusé la croyait telle.

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CLAUSE 22

SUBJECT AND EFFECT

The proposed amendment to the existing offence in section 172.1 (Luring a child) is three-fold.

First, it updates the existing reference to "by means of a computer system" by replacing it with "by means of telecommunication". The proposed new terminology is consistent with related reforms proposed by Bill C-51, the *Investigative Powers for the 21st Century Act,* currently before Parliament.

Second, the proposed amendment would impose a minimum penalty of 90 days imprisonment when proceeded on summary conviction and a minimum penalty of 1 year when proceeded on indictment.

Third, the proposed amendment would add 4 offences to the list of enumerated offences: sections 170 (Parent or guardian procuring sexual activity), 171 - Householder permitting sexual activity, 212(2) - Living on the avails of prostitution of person under eighteen, and 212(2.1) - Aggravated offence in relation to living on the avails of prostitution of a person under the age of eighteen years. It would also re-align the enumeration of offences along the applicable ages of consent.

REASON FOR CHANGE

The proposed amendment of the offence's terminology will ensure that the offence encompasses the widest range of methods of communication involving technologies. Its existing terminology would not, for example, likely apply to communications via a landline telephone whereas the proposed new terminology would apply to both, Internet-based and landline telephone, as well as to communications via cell phones, wire line, telegraph or any radio-based communication.

The addition of offences to the existing enumeration and re-alignment of the enumerated offences will make the offence consistent with the proposed new offences in section 171.1 (Clause 13) and section 172.2 (Clause 15).

The proposed imposition of a mandatory minimum sentence for the offence of Luring a child would better reflect the serious nature of the offence. It would also provide greater coherence to all mandatory minimum penalties for child sexual offences: hybrid offences punishable by a maximum of 18 months on summary conviction and by a maximum of 10 years on indictment would carry mandatory

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minimum penalties of 90 days and 1 year imprisonment respectively.

RELATED CLAUSES

Clauses 10, 11, 12, 13, 15, 17, 21, 23, 24 and 25

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CLAUSE 23 (Section 172.2)

PRESENT SECTION

Not applicable

PROPOSED SECTION

23. Section173 of the Act is replaced by the following:

172.2 (1) Every person commits an offence who, by a means of telecommunication, agrees with a person, or makes an arrangement with a person, to commit an offence

(*a*) under subsection 153(1), section 155, 163.1, 170 or 171 or subsection 212(1), (2), (2.1) or (4) with respect to another person who is, or who the accused believes is, under the age of 18 years;

(*b*) under section 151 or 152, subsection 160(3) or 173(2) or section 271, 272, 273 or 280 with respect to another person who is, or who the accused believes is, under the age of 16 years; or

(*c*) under section 281 with respect to another person who is, or who the accused believes is, under the age of 14 years.

(2) Every person who commits an offence under subsection (1)

(*a*) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year; or

(*b*) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months and to a minimum punishment of imprisonment for a term of 90 days.

(3) Evidence that the person referred to in paragraph (1)(*a*), (*b*) or (*c*) was represented to the accused as being under the age of 18, 16 or 14 years, as the case may be, is, in the absence of evidence to the contrary, proof that the accused believed that the person was under that age.

(4) It is not a defence to a charge under paragraph (1)(*a*), (*b*) or (*c*) that the accused believed that the person referred to in that paragraph was at least 18, 16

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or 14 years of age, as the case may be, unless the accused took reasonable steps to ascertain the age of the person.

(5) It is not a defence to a charge under paragraph (1)(*a*), (*b*) or (*c*)

(*a*) that the person with whom the accused agreed or made an arrangement was a peace officer or a person acting under the direction of a peace officer; or

(*b*) that, if the person with whom the accused agreed or made an arrangement was a peace officer or a person acting under the direction of a peace officer, the person referred to in paragraph (1)(*a*), (*b*) or (*c*) did not exist.

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CLAUSE 23 (Section 172.2)

SUBJECT AND EFFECT

The proposed amendment would create a new offence prohibiting any one from agreeing or making arrangements with another person, through any means of telecommunication, to commit an enumerated sexual or abduction offence against a child.

Consistent with all child sexual offences, the proposed new offence provides a presumption that evidence that the young person was represented as being under the age of consent to sexual activity is proof that the accused believed the person to be under the age of consent in the absence of evidence to the contrary. Similarly, the defence of honest but mistaken belief in the age of the young person is not available to an accused unless the accused took reasonable steps to ascertain the age of the young person.

An accused would not have a defence where the person with whom the accused agreed/made arrangements was a peace officer or a person under a peace officer's direction or that in that situation, no such child victim existed.

The proposed offence would be a hybrid offence, carrying a minimum penalty of 90 days and a maximum of 18 months imprisonment on summary conviction, and a minimum penalty of 1 year and a maximum of 10 years imprisonment on indictment.

REASON FOR CHANGE

The proposed new offence addresses a gap not currently addressed by section 172.1– Luring a child. Section 172.1 applies to the situation where the accused communicates through a means of telecommunication directly with a young person for the purpose of facilitating the commission of an enumerated sexual or abduction offence against that young person. It does not, however, apply to a situation where the agreement or arrangements are made between the accused and another person to commit one of the enumerated offences against a child.

The listing of enumerated sexual and abduction offences and their alignment with the applicable ages of consent to sexual activity, as well as the provision of the presumption and defences, will make the offence consistent with other child sexual offences.

The proposed imposition of a mandatory minimum sentence for the offence would ensure that it reflects the serious nature of the offence. It would also

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provide greater coherence to all mandatory minimum penalties for child sexual offences: hybrid offences punishable by a maximum of 18 months on summary conviction and by a maximum of 10 years on indictment would carry mandatory minimum penalties of 90 days and 1 year imprisonment respectively.

RELATED CLAUSES

Clauses 10, 11, 12, 13, 15, 18, 21, 22, 24, 25, 28, 29, 30, 31, 35, 36 and 37

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CLAUSE 23 (Section 173)

PRESENT SECTION

173 (1) Every one who willfully does an indecent act

(*a*) in a public place in the presence of one or more persons, or

(*b*) in any place, with intent thereby to insult or offend any person,

is guilty of an offence punishable on summary conviction.

(2) Every person who, in any place, for a sexual purpose, exposes his or her genital organs to a person who is under the age of 16 years

(*a*) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or

(*b*) is guilty of an offence punishable on summary conviction

PROPOSED SECTION

Section 173 of the Act is replaced by the following:

173. (1) Everyone who wilfully does an indecent act in a public place in the presence of one or more persons, or in any place with intent to insult or offend any person,

(*a*) is guilty of an indictable offence and is liable to imprisonment for a term of not more than two years; or

(*b*) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than six months.

(2) Every person who, in any place, for a sexual purpose, exposes his or her genital organs to a person who is under the age of 16 years

(*a*) is guilty of an indictable offence and is liable to imprisonment for a term of not more than two years and to a minimum punishment of imprisonment for a term of 90 days; or

(*b*) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than six months and to a minimum punishment of imprisonment for a term of 30 days.

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CLAUSE 23 (Section 173)

SUBJECT AND EFFECT

Section 173 is currently a summary conviction (only) offence that carries a maximum penalty of 6 months imprisonment. It prohibits wilfully doing an indecent act in a public place in the presence of one or more persons or in any place with intent to insult or offend any person (subsection 173(1) – Indecent acts) and exposing one's genital organs for a sexual purpose, in any place, to a young person (subsection 173(2) – Exposure).

The proposed amendment would hybridize both subsections 173(1) – Indecent Acts and 173(2) – Exposure. Subsection 173(1) – Indecent acts, would impose a maximum penalty of 6 months imprisonment on summary conviction and a maximum penalty of 2 years on indictment.

Subsection 173(2) would impose the same maximum penalties but would also impose a mandatory minimum sentence of 90 days on summary conviction and a minimum penalty of 1 year on indictment.

REASON FOR CHANGE

Some sex offenders begin their offending by engaging in such "exposure"/ non-contact sexual offences and escalate to contact sexual offending. Many child sex offenders engage in some form of exposure. The harmful nature and impact of this conduct is not adequately reflected with a summary conviction (only) offence and a maximum penalty of 6 months imprisonment. Hybridizing section 173 and imposing a maximum penalty of 2 years imprisonment on indictment and 6 months on summary conviction would better reflect the harmful nature and impact of the prohibited conduct.

The proposed imposition of a mandatory minimum sentence for the offence would ensure that it better reflects the particular impact of the offence on child victims. It would also provide greater coherence to all mandatory minimum penalties for child sexual offences: hybrid offences punishable by a maximum of 6 months on summary conviction and by a maximum of 2 years on indictment would carry mandatory minimum penalties of 30 and 90 days imprisonment respectively.

RELATED CLAUSES

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

Clauses 19, 20 and 21

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 24

PRESENT SECTION

183. "offence" means an offence contrary to, any conspiracy or attempt to commit or being an accessory after the fact in relation to an offence contrary to, or any counselling in relation to an offence contrary to

(*a*) any of the following provisions of this Act, namely,

(i) section 47 (high treason),

(ii) section 51 (intimidating Parliament or a legislature),

(iii) section 52 (sabotage),

(iii.1) section 56.1 (identity documents),

(iv) section 57 (forgery, etc.),

(v) section 61 (sedition),

(vi) section 76 (hijacking),

(vii) section 77 (endangering safety of aircraft or airport),

(viii) section 78 (offensive weapons, etc., on aircraft),

(ix) section 78.1 (offences against maritime navigation or fixed platforms),

(x) section 80 (breach of duty),

(xi) section 81 (using explosives),

(xii) section 82 (possessing explosives),

(xii.1) section 83.02 (providing or collecting property for certain activities),

(xii.2) section 83.03 (providing, making available, etc., property or services for terrorist purposes),

(xii.3) section 83.04 (using or possessing property for terrorist purposes),

(xii.4) section 83.18 (participation in activity of terrorist group),

(xii.5) section 83.19 (facilitating terrorist activity),

(xii.6) section 83.2 (commission of offence for terrorist group),

(xii.7) section 83.21 (instructing to carry out activity for terrorist group),

(xii.8) section 83.22 (instructing to carry out terrorist activity),

(xii.9) section 83.23 (harbouring or concealing),

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(xii.91) section 83.231 (hoax — terrorist activity),

(xiii) section 96 (possession of weapon obtained by commission of offence),

(xiii.1) section 98 (breaking and entering to steal firearm),

(xiii.2) section 98.1 (robbery to steal firearm),

(xiv) section 99 (weapons trafficking),

(xv) section 100 (possession for purpose of weapons trafficking),

(xvi) section 102 (making automatic firearm),

(xvii) section 103 (importing or exporting knowing it is unauthorized),

(xviii) section 104 (unauthorized importing or exporting),

(xix) section 119 (bribery, etc.),

(xx) section 120 (bribery, etc.),

(xxi) section 121 (fraud on government),

(xxii) section 122 (breach of trust),

(xxiii) section 123 (municipal corruption),

(xxiv) section 132 (perjury),

(xxv) section 139 (obstructing justice),

(xxvi) section 144 (prison breach),

(xxvii) subsection 145(1) (escape, etc.),

(xxvii.1) section 162 (voyeurism),

(xxviii) paragraph 163(1)(*a*) (obscene materials),

(xxix) section 163.1 (child pornography),

(xxx) section 184 (unlawful interception),

(xxxi) section 191 (possession of intercepting device),

(xxxii) subsection 201(1) (keeping gaming or betting house),

(xxxiii) paragraph 202(1)(*e*) (pool-selling, etc.),

(xxxiv) subsection 210(1) (keeping common bawdy house),

(xxxv) subsection 212(1) (procuring),

(xxxvi) subsection 212(2) (procuring),

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(xxxvii) subsection 212(2.1) (aggravated offence in relation to living on the avails of prostitution of a person under the age of eighteen years),

(xxxviii) subsection 212(4) (offence — prostitution of person under eighteen),

(xxxix) section 235 (murder),

(xxxix.1) section 244 (discharging firearm with intent),

(xxxix.2) section 244.2 (discharging firearm — recklessness),

(xl) section 264.1 (uttering threats),

(xli) section 267 (assault with a weapon or causing bodily harm),

(xlii) section 268 (aggravated assault),

(xliii) section 269 (unlawfully causing bodily harm),

(xliii.1) section 270.01 (assaulting peace officer with weapon or causing bodily harm),

(xliii.2) section 270.02 (aggravated assault of peace officer),

(xliv) section 271 (sexual assault),

(xlv) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm),

(xlvi) section 273 (aggravated sexual assault),

(xlvii) section 279 (kidnapping),

(xlvii.1) section 279.01 (trafficking in persons),

(xlvii.11) section 279.011 (trafficking of a person under the age of eighteen years),

(xlvii.2) section 279.02 (material benefit),

(xlvii.3) section 279.03 (withholding or destroying documents),

(xlviii) section 279.1 (hostage taking),

(xlix) section 280 (abduction of person under sixteen),

(l) section 281 (abduction of person under fourteen),

(li) section 282 (abduction in contravention of custody order),

(lii) section 283 (abduction),

(liii) section 318 (advocating genocide),

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(liv) section 327 (possession of device to obtain telecommunication facility or service),

(lv) section 334 (theft),

(lvi) section 342 (theft, forgery, etc., of credit card),

(lvi.1) section 342.01 (instruments for copying credit card data or forging or falsifying credit cards),

(lvii) section 342.1 (unauthorized use of computer),

(lviii) section 342.2 (possession of device to obtain computer service),

(lix) section 344 (robbery),

(lx) section 346 (extortion),

(lxi) section 347 (criminal interest rate),

(lxii) section 348 (breaking and entering),

(lxiii) section 354 (possession of property obtained by crime),

(lxiv) section 356 (theft from mail),

(lxv) section 367 (forgery),

(lxvi) section 368 (use, trafficking or possession of forged document),

(lxvi.1) section 368.1 (forgery instruments),

(lxvii) section 372 (false messages),

(lxviii) section 380 (fraud),

(lxix) section 381 (using mails to defraud),

(lxx) section 382 (fraudulent manipulation of stock exchange transactions),

(lxx.1) subsection 402.2(1) (identity theft),

(lxx.2) subsection 402.2(2) (trafficking in identity information),

(lxx.3) section 403 (identity fraud),

(lxxi) section 423.1 (intimidation of justice system participant or journalist),

(lxxii) section 424 (threat to commit offences against internationally protected person),

(lxxii.1) section 424.1 (threat against United Nations or associated personnel),

(lxxiii) section 426 (secret commissions),

(lxxiv) section 430 (mischief),

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(lxxv) section 431 (attack on premises, residence or transport of internationally protected person),

(lxxv.1) section 431.1 (attack on premises, accommodation or transport of United Nations or associated personnel),

(lxxv.2) subsection 431.2(2) (explosive or other lethal device),

(lxxvi) section 433 (arson),

(lxxvii) section 434 (arson),

(lxxviii) section 434.1 (arson),

(lxxix) section 435 (arson for fraudulent purpose),

(lxxx) section 449 (making counterfeit money),

(lxxxi) section 450 (possession, etc., of counterfeit money),

(lxxxii) section 452 (uttering, etc., counterfeit money),

(lxxxiii) section 462.31 (laundering proceeds of crime),

(lxxxiv) subsection 462.33(11) (acting in contravention of restraint order),

(lxxxv) section 467.11 (participation in criminal organization),

(lxxxvi) section 467.12 (commission of offence for criminal organization), or

(lxxxvii) section 467.13 (instructing commission of offence for criminal organization),

PROPOSED SECTION

24. Paragraph (*a*) of the definition "offence" in section 183 of the Act is amended by adding the following after subparagraph (xxix):

(xxix.1) section 170 (parent or guardian procuring sexual activity),

(xxix.2) section 171 (householder permitting sexual activity),

(xxix.3) section 171.1 (making sexually explicit material available to child),

(xxix.4) section 172.1 (luring a child),

(xxix.5) section 172.2 (agreement or arrangement — sexual offence against child),

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 24

SUBJECT AND EFFECT

The proposed amendment would add 5 offences to the offences listed in s. 183 and for which interception of private communications by peace officers (i.e., wiretapping) may be authorized:

- the two new offences proposed by this Bill: sections 171.1 – Making sexually explicit material available to child and 172.2 – Agreement or arrangement – sexual offence against child;

- section 172.1 – Luring a child; and

- sections 170 – Parent or guardian procuring sexual activity and 171 – Householder permitting sexual activity.

REASON FOR CHANGE

The addition of the 5 offences to the list of offences for which peace officers may be authorized to intercept private communications would provide consistent treatment for similar offences.

RELATED CLAUSES

Clauses 19, 20, 21, 22 and 23

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 25

PRESENT SECTION

271. (1) Every one who commits a sexual assault is guilty of

(*a*) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or

(*b*) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

(2) [Repealed, R.S., 1985, c. 19 (3rd Supp.), s. 10]

PROPOSED SECTION

25. Section 271 of the Act is replaced by the following:

271. Everyone who commits a sexual assault is guilty of

(*a*) an indictable offence and is liable to imprisonment for a term not exceeding 10 years and, if the complainant is under the age of 16 years, to a minimum punishment of imprisonment for a term of one year; or

(*b*) an offence punishable on summary conviction and is liable to imprisonment for a term not exceeding 18 months and, if the complainant is under the age of 16 years, to a minimum punishment of imprisonment for a term of 90 days.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 25

SUBJECT AND EFFECT

The proposed amendment would impose a minimum penalty of 90 days imprisonment on summary conviction and a minimum penalty of 1 year imprisonment on indictment imprisonment where the victim is under the age of 16 years.

REASON FOR CHANGE

The proposed amendment would impose a mandatory minimum sentence for the offence of sexual assault where the victim is a child to better reflect the serious nature of the offence. It would also provide greater coherence to all mandatory minimum penalties for child sexual offences: hybrid offences punishable by a maximum of 18 months on summary conviction and by a maximum of 10 years on indictment would carry mandatory minimum penalties of 90 days and 1 year imprisonment respectively.

RELATED CLAUSES

Clauses 11, 12, 13, 14, 15, 17, 21, 22 and 23

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 26

PRESENT SECTION

272. (1) Every person commits an offence who, in committing a sexual assault,

(*a*) carries, uses or threatens to use a weapon or an imitation of a weapon;

(*b*) threatens to cause bodily harm to a person other than the complainant;

(*c*) causes bodily harm to the complainant; or

(*d*) is a party to the offence with any other person.

(2) Every person who commits an offence under subsection (1) is guilty of an indictable offence and liable

(*a*) if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for a term not exceeding 14 years and to a minimum punishment of imprisonment for a term of

(i) in the case of a first offence, five years, and

(ii) in the case of a second or subsequent offence, seven years;
(*a.1*) in any other case where a firearm is used in the commission of the offence, to imprisonment for a term not exceeding 14 years and to a minimum punishment of imprisonment for a term of four years; and

(*b*) in any other case, to imprisonment for a term not exceeding fourteen years.

(3) In determining, for the purpose of paragraph (2)(*a*), whether a convicted person has committed a second or subsequent offence, if the person was earlier convicted of any of the following offences, that offence is to be considered as an earlier offence:

(*a*) an offence under this section;

(*b*) an offence under subsection 85(1) or (2) or section 244 or 244.2; or

(*c*) an offence under section 220, 236, 239 or 273, subsection 279(1) or section 279.1, 344 or 346 if a firearm was used in the commission of the offence.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

However, an earlier offence shall not be taken into account if 10 years have elapsed between the day on which the person was convicted of the earlier offence and the day on which the person was convicted of the offence for which sentence is being imposed, not taking into account any time in custody.

(4) For the purposes of subsection (3), the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences or whether any offence occurred before or after any conviction.

PROPOSED SECTION

26. Subsection 272(2) of the Act is amended by striking out "and" at the end of paragraph (*a.1*) and by adding the following after that paragraph:

(*a.2*) if the complainant is under the age of 16 years, to imprisonment for a term not exceeding 14 years and to a minimum punishment of imprisonment for a term of five years; and

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 26

SUBJECT AND EFFECT

The proposed amendment would impose a minimum penalty of 5 years imprisonment where the victim is under the age of 16 years.

REASON FOR CHANGE

The proposed amendment would impose a mandatory minimum sentence for the offence of sexual assault with a weapon where the victim is a child to better reflect the serious nature of the offence. It would also provide greater coherence to all mandatory minimum penalties for child sexual offences: offences punishable by a maximum of 14 years would carry a mandatory minimum penalty of 5 years imprisonment.

RELATED CLAUSE

Clause 14

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 27

PRESENT SECTION

273 (1) Every one commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or endangers the life of the complainant.

(2) Every person who commits an aggravated sexual assault is guilty of an indictable offence and liable

(*a*) if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for life and to a minimum punishment of imprisonment for a term of

(i) in the case of a first offence, five years, and

(ii) in the case of a second or subsequent offence, seven years;

(*a.1*) in any other case where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

(*b*) in any other case, to imprisonment for life.

(3) In determining, for the purpose of paragraph (2)(*a*), whether a convicted person has committed a second or subsequent offence, if the person was earlier convicted of any of the following offences, that offence is to be considered as an earlier offence:

(*a*) an offence under this section;

(*b*) an offence under subsection 85(1) or (2) or section 244 or 244.2; or

(*c*) an offence under section 220, 236, 239 or 272, subsection 279(1) or section 279.1, 344 or 346 if a firearm was used in the commission of the offence.

However, an earlier offence shall not be taken into account if 10 years have elapsed between the day on which the person was convicted of the earlier offence and the day on which the person was convicted of the offence for which sentence is being imposed, not taking into account any time in custody.

(4) For the purposes of subsection (3), the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

of commission of offences or whether any offence occurred before or after any conviction.

PROPOSED SECTION

27. Subsection 273(2) of the Act is amended by striking out "and" at the end of paragraph (*a.1*) and by adding the following after that paragraph:

(*a.2*) if the complainant is under the age of 16 years, to imprisonment for life and to a minimum punishment of imprisonment for a term of five years; and

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 27

SUBJECT AND EFFECT

The proposed amendment would impose a minimum penalty of 5 years imprisonment where the victim is under the age of 16 years.

REASON FOR CHANGE

The proposed amendment would impose a mandatory minimum sentence for the offence of aggravated sexual assault where the victim is a child to better reflect the serious nature of the offence. It would also provide greater coherence to all mandatory minimum penalties for child sexual offences: offences punishable by a maximum of life imprisonment would carry a mandatory minimum penalty of 5 years imprisonment.

RELATED CLAUSE

None

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 28

PRESENT SECTION

486 (3) If an accused is charged with an offence under section 151, 152, 153, 153.1, 155 or 159, subsection 160(2) or (3) or section 163.1, 171, 172, 172.1, 173, 212, 271, 272, 273, 279.01, 279.011, 279.02 or 279.03 and the prosecutor or the accused applies for an order under subsection (1), the judge or justice shall, if no such order is made, state, by reference to the circumstances of the case, the reason for not making an order.

PROPOSED SECTION

28. Subsection 486(3) of the Act is amended by replacing "171, 172, 172.1" with "170, 171, 171.1, 172, 172.1, 172.2".

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 28

SUBJECT AND EFFECT

Subsection 486 enables a court to order the exclusion of the public from the court room to maintain the proper administration of justice which includes ensuring that the interests of witnesses under the age of 18 years are safeguarded in all proceedings. Subsection 486(3) requires a court that declines to make such an exclusion order in the case of an accused who is charged with one of the enumerated sexual offences against a child to state the reasons for not making the order.

The proposed amendment would add three offences to the list of enumerated sexual offences for which reasons for declining to make an exclusion order must be provided: sections 170 – Parent or guardian procuring sexual activity; 171.1 – Making sexually explicit material available to child; and 172.2 – Agreement or arrangement – sexual offence against child.

REASON FOR CHANGE

The proposed amendment would add the two new offences proposed by this Bill as well as the existing offence in section 170 to ensure consistent treatment for all sexual offences involving child victims.

RELATED CLAUSES

Clauses 19, 21 and 23

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 29

PRESENT SECTION

486.4 (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the complainant or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(*a*) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 162, 163.1, 170, 171, 172, 172.1, 173, 210, 211, 212, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 346 or 347,

(ii) an offence under section 144 (rape), 145 (attempt to commit rape), 149 (indecent assault on female), 156 (indecent assault on male) or 245 (common assault) or subsection 246(1) (assault with intent) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 4, 1983, or

(iii) an offence under subsection 146(1) (sexual intercourse with a female under 14) or (2) (sexual intercourse with a female between 14 and 16) or section 151 (seduction of a female between 16 and 18), 153 (sexual intercourse with step-daughter), 155 (buggery or bestiality), 157 (gross indecency), 166 (parent or guardian procuring defilement) or 167 (householder permitting defilement) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 1, 1988; or

(*b*) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in any of subparagraphs (*a*)(i) to (iii).

PROPOSED SECTION

29. Subparagraph 486.4(1)(*a*)(i) of the Act is amended by replacing

(*a*) "171, 172, 172.1" with "171, 171.1, 172, 172.1, 172.2"; and

(*b*) "279.03" with "279.03, 280, 281".

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 29

SUBJECT AND EFFECT

Subsection 486.4 enables a court to make an order restricting the publication of any information that could identify the complainant or witness in proceedings in respect of one of the enumerated offences (that are predominantly sexual offences).

The proposed amendment would add four offences to the list of enumerated offences for which the publication ban could be made: sections 171.1 – Making sexually explicit material available to child; 172.2 – Agreement or arrangement – sexual offence against child; 280 – Abduction of person under 16 years; and 281 – Abduction of person under 14 years.

REASON FOR CHANGE

The proposed amendment would add the two new offences proposed by this Bill as well as the existing child abduction offences in sections 280 and 281 to ensure consistent treatment for all sexual and abduction offences involving child victims.

RELATED CLAUSES

Clauses 21, 23 and 28

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 30

PRESENT SECTION

487.04 In this section and in sections 487.05 to 487.0911,

"primary designated offence" means …

(*a*) an offence under any of the following provisions, namely,

(i) subsection 7(4.1) (offence in relation to sexual offences against children),

(i.1) section 151 (sexual interference),

(i.2) section 152 (invitation to sexual touching),

(i.3) section 153 (sexual exploitation),

(i.4) section 153.1 (sexual exploitation of person with disability),

(i.5) section 155 (incest),

(i.6) subsection 160(2) (compelling the commission of bestiality),

(i.7) subsection 160(3) (bestiality in presence of or by a child),

(i.8) section 163.1 (child pornography),

(i.9) section 170 (parent or guardian procuring sexual activity),

(i.91) section 172.1 (luring a child by means of a computer system),

(i.92) subsection 173(2) (exposure),

(i.93) paragraph 212(1)(*i*) (stupefying or overpowering for the purpose of sexual intercourse),

(i.94) subsection 212(2) (living on the avails of prostitution of a person under age of 18),

(i.95) subsection 212(2.1) (aggravated offence in relation to living on the avails of prostitution of a person under age of 18),

(i.96) subsection 212(4) (obtaining prostitution of person under age of 18),

(ii) section 235 (murder),

(iii) section 236 (manslaughter),

(iv) section 239 (attempt to commit murder),

(v) section 244 (discharging firearm with intent),

(vi) section 244.1 (causing bodily harm with intent — air gun or pistol),

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(vi.1) section 244.2 (discharging firearm — recklessness),

(vii) paragraph 245(*a*) (administering noxious thing with intent to endanger life or cause bodily harm),

(viii) section 246 (overcoming resistance to commission of offence),

(ix) section 267 (assault with a weapon or causing bodily harm),

(x) section 268 (aggravated assault),

(xi) section 269 (unlawfully causing bodily harm),

(xi.1) section 270.01 (assaulting peace officer with weapon or causing bodily harm),

(xi.2) section 270.02 (aggravated assault of peace officer),

(xi.3) section 271 (sexual assault),

(xii) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm),

(xiii) section 273 (aggravated sexual assault),

(xiii.1) subsection 273.3(2) (removal of a child from Canada),

(xiv) section 279 (kidnapping),

(xv) section 344 (robbery), and

(xvi) section 346 (extortion),

(*a.1*) an offence under any of the following provisions, namely,

(i) section 75 (piratical acts),

(i.01) section 76 (hijacking),

(i.02) section 77 (endangering safety of aircraft or airport),

(i.03) section 78.1 (seizing control of ship or fixed platform),

(i.04) subsection 81(1) (using explosives),

(i.05) section 83.18 (participation in activity of terrorist group),

(i.06) section 83.19 (facilitating terrorist activity),

(i.07) section 83.2 (commission of offence for terrorist group),

(i.08) section 83.21 (instructing to carry out activity for terrorist group),

(i.09) section 83.22 (instructing to carry out terrorist activity),

(i.1) section 83.23 (harbouring or concealing),

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(i.11) to (iii.1) [Repealed, 2010, c. 17, s. 3]

(iv) paragraphs 212(1)(*a*) to (*h*) (procuring),
(iv.1) to (iv.5) [Repealed, 2010, c. 17, s. 3]

(v) paragraph 212(1)(*j*) (procuring),
(v.1) and (v.2) [Repealed, 2010, c. 17, s. 3]

(vi) section 233 (infanticide),
(vii) [Repealed, 2010, c. 17, s. 3]

(vii.1) section 279.01 (trafficking in persons),

(vii.11) section 279.011 (trafficking of a person under the age of eighteen years),

(viii) section 279.1 (hostage taking),

(ix) paragraph 348(1)(*d*) (breaking and entering a dwelling-house),

(x) section 423.1 (intimidation of a justice system participant or journalist),

(xi) section 431 (attack on premises, residence or transport of internationally protected person),

(xii) section 431.1 (attack on premises, accommodation or transport of United Nations or associated personnel),

(xiii) subsection 431.2(2) (explosive or other lethal device),

(xiv) section 467.11 (participation in activities of criminal organization),

(xv) section 467.12 (commission of offence for criminal organization), and

(xvi) section 467.13 (instructing commission of offence for criminal organization),

(xvi.1) to (xx) [Repealed, 2005, c. 25, s. 1]

(*b*) an offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as they read from time to time before January 4, 1983, namely,

(i) section 144 (rape),

(i.1) section 145 (attempt to commit rape),

(ii) section 146 (sexual intercourse with female under fourteen and between fourteen and sixteen),

(iii) section 148 (sexual intercourse with feeble-minded, etc.),

(iv) section 149 (indecent assault on female),

(v) section 156 (indecent assault on male),

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(vi) section 157 (acts of gross indecency), and

(vii) subsection 246(1) (assault with intent) if the intent is to commit an offence referred to in subparagraphs (i) to (vi),

(*c*) an offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as they read from time to time before January 1, 1988:

(i) subsection 146(1) (sexual intercourse with a female under age of 14),

(ii) subsection 146(2) (sexual intercourse with a female between ages of 14 and 16),

(iii) section 153 (sexual intercourse with step-daughter),

(iv) section 157 (gross indecency),

(v) section 166 (parent or guardian procuring defilement), and

(vi) section 167 (householder permitting defilement),

(*c.01*) an offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as enacted by section 19 of *An Act to amend the Criminal Code in relation to sexual offences and other offences against the person and to amend certain other Acts in relation thereto or in consequence thereof*, chapter 125 of the Statutes of Canada, 1980-81-82-83:

(i) section 246.1 (sexual assault),

(ii) section 246.2 (sexual assault with a weapon, threats to a third party or causing bodily harm), and

(iii) section 246.3 (aggravated sexual assault),

(*c.1*) an offence under any of the following provisions of the *Security of Information Act*, namely,

(i) section 6 (approaching, entering, etc., a prohibited place),

(ii) subsection 20(1) (threats or violence), and

(iii) subsection 21(1) (harbouring or concealing), and

(*d*) an attempt to commit or, other than for the purposes of subsection 487.05(1), a conspiracy to commit an offence referred to in any of paragraphs (*a*) to (*c.01*);

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

PROPOSED SECTION

30. Subparagraph (*a*)(i.91) of the definition "primary designated offence" in section 487.04 of the Act is replaced by the following:

(i.901) section 171.1 (making sexual explicit material available to child),

(i.01) section 172.1 (luring a child),

(i.911) section 172.2 (agreement or arrangement – sexual offence against child),

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 30

SUBJECT AND EFFECT

The proposed amendment would add the proposed new offences in sections 171.1 – Making sexually explicit material available to child and 172.2 – Agreement or arrangement – sexual offence against child, as well as the existing offence in section 172.1 – Luring a child to paragraph (a) of the definition of "primary designated offence" in section 487.04 for DNA collection purposes. The effect of this amendment would be to require a court to make an order authorizing the taking of a bodily sample for the purpose of forensic DNA analysis from a person convicted of this offence unless the court is satisfied that the impact of such an order on the person's privacy and security of the person would be grossly disproportionate to the public interest in the protection of society and the proper administration of justice, to be achieved through the early detection, arrest and conviction of offenders.

REASON FOR CHANGE

The proposed amendment would ensure consistent treatment of the proposed new and existing offences with other similar child sexual offences for DNA collection purposes.

RELATED CLAUSES

Clauses 21 and 23

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 31

PRESENT SECTION

490.011 (1) The following definitions apply in this section and in sections 490.012 to 490.032.

"designated offence" means

(*a*) an offence under any of the following provisions:

(i) subsection 7(4.1) (offence in relation to sexual offences against children),

(ii) section 151 (sexual interference),

(iii) section 152 (invitation to sexual touching),

(iv) section 153 (sexual exploitation),

(v) section 153.1 (sexual exploitation of person with disability),

(vi) section 155 (incest),

(vi.1) subsection 160(2) (compelling the commission of bestiality),

(vii) subsection 160(3) (bestiality in presence of or by a child),

(viii) section 163.1 (child pornography),

(ix) section 170 (parent or guardian procuring sexual activity),

(x) section 172.1 (luring a child by means of a computer system),

(xi) subsection 173(2) (exposure),

(xii) paragraph 212(1)(*i*) (stupefying or overpowering for the purpose of sexual intercourse),

(xiii) subsection 212(2) (living on the avails of prostitution of a person under age of eighteen),

(xiv) subsection 212(2.1) (aggravated offence — living on the avails of prostitution of a person under age of eighteen),

(xv) subsection 212(4) (obtaining prostitution of person under age of eighteen),

(xvi) section 271 (sexual assault),

(xvii) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm),

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(xviii) paragraph 273(2)(*a*) (aggravated sexual assault — use of a restricted firearm or prohibited firearm or any firearm in connection with criminal organization),

(xviii.1) paragraph 273(2)(*a.1*) (aggravated sexual assault — use of a firearm),

(xix) paragraph 273(2)(*b*) (aggravated sexual assault), and

(xx) subsection 273.3(2) (removal of a child from Canada);

(*b*) an offence under any of the following provisions:

(i) section 162 (voyeurism),

(i.1) subsection 173(1) (indecent acts),

(ii) section 177 (trespassing at night),

(iii) section 230 (murder in commission of offences),

(iii.1) section 231 (murder),

(iv) section 234 (manslaughter),

(v) paragraph 246(*b*) (overcoming resistance to commission of offence),

(vi) section 264 (criminal harassment),

(vii) section 279 (kidnapping),

(vii.1) section 279.01 (trafficking in persons),

(vii.11) section 279.011 (trafficking of a person under the age of eighteen years),

(viii) section 280 (abduction of a person under age of sixteen),

(ix) section 281 (abduction of a person under age of fourteen),

(x) paragraph 348(1)(*d*) (breaking and entering a dwelling house with intent to commit an indictable offence),

(xi) paragraph 348(1)(*d*) (breaking and entering a dwelling house and committing an indictable offence),

(xii) paragraph 348(1)(*e*) (breaking and entering a place other than a dwelling house with intent to commit an indictable offence), and

(xiii) paragraph 348(1)(*e*) (breaking and entering a place other than a dwelling house and committing an indictable offence);

(*c*) an offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as they read from time to time before January 4, 1983:

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(i) section 144 (rape),

(ii) section 145 (attempt to commit rape),

(iii) section 149 (indecent assault on female),

(iv) section 156 (indecent assault on male), and

(v) subsection 246(1) (assault with intent) if the intent is to commit an offence referred to in any of subparagraphs (i) to (iv);

(*c.1*) an offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as enacted by section 19 of *An Act to amend the Criminal Code in relation to sexual offences and other offences against the person and to amend certain other Acts in relation thereto or in consequence thereof*, chapter 125 of the Statutes of Canada, 1980-81-82-83:

(i) section 246.1 (sexual assault),

(ii) section 246.2 (sexual assault with a weapon, threats to a third party or causing bodily harm), and

(iii) section 246.3 (aggravated sexual assault);

(*d*) an offence under any of the following provisions of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as they read from time to time before January 1, 1988:

(i) subsection 146(1) (sexual intercourse with a female under age of fourteen),

(ii) subsection 146(2) (sexual intercourse with a female between ages of fourteen and sixteen),

(iii) section 153 (sexual intercourse with step-daughter),

(iv) section 157 (gross indecency),

(v) section 166 (parent or guardian procuring defilement), and

(vi) section 167 (householder permitting defilement);

(*e*) an attempt or conspiracy to commit an offence referred to in any of paragraphs (*a*), (*c*), (*c.1*) and (*d*); or

(*f*) an attempt or conspiracy to commit an offence referred to in paragraph (*b*).

PROPOSED SECTION

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

31. Subparagraph (*a*)(x) of the definition "designated offence" in subsection 490.011(1) of the Act is replaced by the following:

(ix.1) section 171.1 (making sexually explicit material available to child),

(x) section 172.1 (luring a child),

(x.1) section 172.2 (agreement or arrangement — sexual offence against child),

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 31

SUBJECT AND EFFECT

The proposed amendment would add three offences to paragraph (a) of the definition of "designated offence" for the purpose of requiring a person convicted of any of these offences to comply with the *Sex Offender Information Registration Act*: sections 171.1 – Making sexually explicit material available to child; 172.1 – Luring a child; and 172.2 – Agreement or arrangement – sexual offence against child.

The effect of this amendment would be to require a court to make an order requiring the person convicted of one of these offences to comply with the *Sex Offender Information Registration Act*.

REASON FOR CHANGE

The proposed amendment would ensure consistent treatment of these offences with other similar child sexual offences for the purpose of complying with the *Sex Offender Information Registration Act.*

RELATED CLAUSES

Clauses 21, 22 and 23

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 32

PRESENT SECTION

515(4.1) When making an order under subsection (2), in the case of an accused who is charged with…..

(*c*) an offence relating to the contravention of subsection 5(3) or (4), 6(3) or 7(2) of the *Controlled Drugs and Substances Act*,
…..
the justice shall add to the order a condition prohibiting the accused from possessing a firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all those things, until the accused is dealt with according to law unless the justice considers that such a condition is not required in the interests of the safety of the accused or the safety and security of a victim of the offence or of any other person.

515(6) Unless the accused, having been given a reasonable opportunity to do so, shows cause why the accused's detention in custody is not justified, the justice shall order, despite any provision of this section, that the accused be detained in custody until the accused is dealt with according to law, if the accused is charged
…

(*d*) with having committed an offence punishable by imprisonment for life under subsection 5(3), 6(3) or 7(2) of the *Controlled Drugs and Substances Act* or the offence of conspiring to commit such an offence.

PROPOSED SECTION

32. (1) Paragraph 515(4.1)(*c*) of the *Criminal Code* is replaced by the following:

(*c*) an offence relating to the contravention of <u>any of sections</u> 5 <u>to</u> 7 of the *Controlled Drugs and Substances Act*,

(2) Paragraph 515(6)(*d*) of the *Criminal Code* is replaced by the following:

(*d*) with having committed an offence punishable by imprisonment for life under <u>any of sections</u> 5 <u>to</u> 7 of the *Controlled Drugs and Substances Act* or the offence of conspiring to commit such an offence.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 32

SUBJECT AND EFFECT

The amendment to subsections 515(4.1) ensures that the new provisions dealing with minimum penalties for the offences listed in sections 5, 6 and 7 of the Controlled Drugs and Substance Act are reflected in paragraphs 515(4.1)(c) and (d) of the Criminal Code which deals with judicial interim release. The amendment to paragraph 515(6) ensures that the new provisions dealing with minimum penalties for the offences listed in sections 5, 6 and 7 of the Controlled Drugs and Substance Act are reflected in paragraph 515(6)(d) of the Criminal Code which deals with judicial interim release.

REASON FOR CHANGE

Both of these amendments are consequential to the amendments creating new minimum penalties in the Controlled Drugs and Substance Act.

RELATED CLAUSE

None

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 33

PRESENT SECTION

553. The jurisdiction of a provincial court judge, or in Nunavut, of a judge of the Nunavut Court of Justice, to try an accused is absolute and does not depend on the consent of the accused where the accused is charged in an information

…..

(*c*) with an offence under

…..

(xi) subsection 5(4) of the *Controlled Drugs and Substances Act.*

PROPOSED SECTION

33. Subparagraph 553(*c*)(xi) of the Act is replaced by the following:

(xi) subsection 5(3)(a.1) of the *Controlled Drugs and Substances Act.*

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 33

SUBJECT AND EFFECT

This amendment ensures that the new provision dealing with the penalty for the offences listed in paragraph 5(3)(a.1) (trafficking and possession for the purpose of trafficking in cannabis in amounts that do not exceed three kilograms) of the Controlled Drugs and Substance Act is reflected in paragraph 553(c)(xi) of the Criminal Code which deals with the jurisdiction of the provincial court.

REASON FOR CHANGE

This amendment is consequential to the amendments creating new minimum penalties for the offences of trafficking and possession for the purpose of trafficking in Schedule I and II substances in the Controlled Drugs and Substance Act.

RELATED CLAUSE

None

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 34

PRESENT SECTION

742.1 If a person is convicted of an offence, other than a serious personal injury offence as defined in section 752, a terrorism offence or a criminal organization offence prosecuted by way of indictment for which the maximum term of imprisonment is ten years or more or an offence punishable by a minimum term of imprisonment, and the court imposes a sentence of imprisonment of less than two years and is satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2, the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the offender's compliance with the conditions imposed under section 742.3.

PROPOSED SECTION

2. Section 742.1 of the Act is replaced by the following:

742.1 If a person is convicted of an offence and the court imposes a sentence of imprisonment of less than two years, the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the conditions imposed under section 742.3, if

(*a*) the court is satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2;

(*b*) the offence is not an offence punishable by a minimum term of imprisonment;

(*c*) the offence is not an offence, prosecuted by way of indictment, for which the maximum term of imprisonment is 14 years or life;

(*d*) the offence is not a terrorism offence, or a criminal organization offence, prosecuted by way of indictment, for which the maximum term of imprisonment is 10 years or more;

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(*e*) the offence is not an offence, prosecuted by way of indictment, for which the maximum term of imprisonment is 10 years, that

(i) resulted in bodily harm,

(ii) involved the import, export, trafficking or production of drugs, or

(iii) involved the use of a weapon; and

(*f*) the offence is not an offence, prosecuted by way of indictment, under any of the following provisions:

(i) section 144 (prison breach),

(ii) section 264 (criminal harassment),

(iii) section 271 (sexual assault),

(iv) section 279 (kidnapping),

(v) section 279.02 (trafficking in persons — material benefit),

(vi) section 281 (abduction of person under fourteen),

(vii) section 333.1 (motor vehicle theft),

(viii) paragraph 334(*a*) (theft over $5000),

(ix) paragraph 348(1)(*e*) (breaking and entering a place other than a dwelling-house),

(x) section 349 (being unlawfully in a dwelling-house), and

(xi) section 435 (arson for fraudulent purpose).

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 34

SUBJECT AND EFFECT

New section 742.1 eliminates the reference to serious personal injury offences and adds limits to the availability of conditional sentences for offences punishable by a maximum term of imprisonment of 14 years or life and for offences prosecuted by indictment and punishable by a maximum term of imprisonment of 10 years that results in bodily harm, involves the import, export, trafficking or production of drugs, or involves the use of a weapon. It also proposes to end the use of conditional sentences for a list of 11 offences prosecuted by indictment for which the maximum term of imprisonment is 10 years.

REASON FOR CHANGE

The reference to serious personal injury offences in section 742.1, a term originally intended to apply to the dangerous and long term offender provisions of the Criminal Code, does not clearly establish limits on the availability of conditional sentences for serious and violent crimes, such as serious property offences (ex: Fraud, theft over $5,000).

The proposed approach would bring clarity and consistency in the application of the conditional sentence regime in cases of serious property and violent offences and will also increase public confidence in the administration of justice and in the conditional sentence regime.

RELATED CLAUSE

None

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 35

PRESENT SECTION

752. In this Part…

"designated offence" means

(*a*) a primary designated offence,

(*b*) an offence under any of the following provisions:

(i) paragraph 81(1)(*a*) (using explosives),

(ii) paragraph 81(1)(*b*) (using explosives),

(iii) section 85 (using firearm or imitation firearm in commission of offence),

(iv) section 87 (pointing firearm),

(iv.1) section 98 (breaking and entering to steal firearm),

(iv.2) section 98.1 (robbery to steal firearm),

(v) section 153.1 (sexual exploitation of person with disability),

(vi) section 163.1 (child pornography),

(vii) section 170 (parent or guardian procuring sexual activity),

(viii) section 171 (householder permitting sexual activity by or in presence of child),

(ix) section 172.1 (luring child),

(x) paragraph 212(1)(*i*) (stupefying or overpowering for purpose of sexual intercourse),

(xi) subsection 212(2.1) (aggravated offence in relation to living on avails of prostitution of person under 18),

(xii) subsection 212(4) (prostitution of person under 18),

(xiii) section 245 (administering noxious thing),

(xiv) section 266 (assault),

(xv) section 269 (unlawfully causing bodily harm),

(xvi) section 269.1 (torture),

(xvii) paragraph 270(1)(*a*) (assaulting peace officer),

(xviii) section 273.3 (removal of child from Canada),

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(xix) subsection 279(2) (forcible confinement),

(xx) section 279.01 (trafficking in persons),

(xx.1) section 279.011 (trafficking of a person under the age of eighteen years),

(xxi) section 279.1 (hostage taking),

(xxii) section 280 (abduction of person under age of 16),

(xxiii) section 281 (abduction of person under age of 14),

(xxiv) section 344 (robbery), and

(xxv) section 348 (breaking and entering with intent, committing offence or breaking out),

PROPOSED SECTION

35. Subparagraph (*b*)(x) of the definition "designated offence" in section 752 of the Act is replaced by the following:

(ix.1) section 172.2 (agreement or arrangement — sexual offence against child),

(x) subsection 212(1) (procuring),

(x.1) subsection 212(2) (living on avails of prostitution of person under eighteen),

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 35

SUBJECT AND EFFECT

The proposed amendment would add three offences to paragraph (b) of the definition of "designated offence" in section 752 for the purpose of finding that an offender is a dangerous offender: sections 172.2 – Agreement or arrangement – sexual offence against child; 212(1) – Procuring; and 212(2) – Living on the avails of prostitution of a person under eighteen.

The conviction of a person for one of these offences and for which the prosecutor is of the view that it is a serious personal injury offence, together with at least two prior convictions of the person for a designated offence that were each sentenced to at least two years of imprisonment, would require the prosecutor to advise the court as to whether he/she intends to make a dangerous offender application.

REASON FOR CHANGE

The proposed amendment would ensure consistent treatment of these offences with other similar child sexual offences for the purpose of a dangerous offender application.

RELATED CLAUSE

Clause 23

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 36

PRESENT SECTION

753.1 (2) The court shall be satisfied that there is a substantial risk that the offender will reoffend if

(*a*) the offender has been convicted of an offence under section 151 (sexual interference), 152 (invitation to sexual touching) or 153 (sexual exploitation), subsection 163.1(2) (making child pornography), subsection 163.1(3) (distribution, etc., of child pornography), subsection 163.1(4) (possession of child pornography), subsection 163.1(4.1) (accessing child pornography), section 172.1 (luring a child), subsection 173(2) (exposure) or section 271 (sexual assault), 272 (sexual assault with a weapon) or 273 (aggravated sexual assault), or has engaged in serious conduct of a sexual nature in the commission of another offence of which the offender has been convicted; and

PROPOSED SECTION

36. Paragraph 753.1(2)(*a*) of the Act is replaced by the following:

(*a*) the offender has been convicted of an offence under section 151 (sexual interference), 152 (invitation to sexual touching) or 153 (sexual exploitation), subsection 163.1(2) (making child pornography), 163.1(3) (distribution, etc., of child pornography), 163.1(4) (possession of child pornography) or 163.1(4.1) (accessing child pornography), section 170 (parent or guardian procuring sexual activity), 171 (householder permitting sexual activity), 171.1 (making sexually explicit material available to child), 172.1 (luring a child) or 172.2 (agreement or arrangement — sexual offence against child), subsection 173(2) (exposure), 212(2) (living on the avails of prostitution of person under eighteen), 212(2.1) (aggravated offence in relation to living on the avails of prostitution of a person under the age of eighteen years) or 212(4) (offence — prostitution of person under eighteen), section 271 (sexual assault), 272 (sexual assault with a weapon) or 273 (aggravated sexual assault), or has engaged in serious conduct of a sexual nature in the commission of another offence of which the offender has been convicted; and

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Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 36

SUBJECT AND EFFECT

The proposed amendment would add seven offences to the list of offences, which if committed, could result in a court determining that the offender is at a substantial risk of reoffending and finding the offender to be a long-term offender: sections 170 – Parent or guardian procuring sexual activity; 171 – Householder permitting sexual activity; 171.1 – Making sexually explicit material available to child; 172.2 – Agreement or arrangement – sexual offence against child; 212(2) – Living on the avails of prostitution of a person under eighteen; 212(2.1) (aggravated offence in relation to living on the avails of prostitution of a person under the age of eighteen years); and 212(4) – Offence - prostitution of person under eighteen.

REASON FOR CHANGE

The proposed amendment would ensure consistent treatment of these offences with other similar child sexual offences for the purpose of a long-term offender application.

RELATED CLAUSES

Clauses 21 and 23

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 37

PRESENT SECTION

810.1 (1) Any person who fears on reasonable grounds that another person will commit an offence under section 151, 152, 155 or 159, subsection 160(2) or (3), section 163.1, 170, 171 or 172.1, subsection 173(2) or section 271, 272 or 273, in respect of one or more persons who are under the age of 16 years, may lay an information before a provincial court judge, whether or not the person or persons in respect of whom it is feared that the offence will be committed are named.

....

(3.02) The provincial court judge may add any reasonable conditions to the recognizance that the judge considers desirable to secure the good conduct of the defendant, including conditions that

(*a*) prohibit the defendant from engaging in any activity that involves contact with persons under the age of 16 years, including using a computer system within the meaning of subsection 342.1(2) for the purpose of communicating with a person under that age;

(*b*) prohibit the defendant from attending a public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, schoolground or playground;

(*c*) require the defendant to participate in a treatment program;

(*d*) require the defendant to wear an electronic monitoring device, if the Attorney General makes the request;

(*e*) require the defendant to remain within a specified geographic area unless written permission to leave that area is obtained from the provincial court judge;

(*f*) require the defendant to return to and remain at his or her place of residence at specified times; or

(*g*) require the defendant to abstain from the consumption of drugs except in accordance with a medical prescription, of alcohol or of any other intoxicating substance.

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Divulgé(s) en vertu de la Loi sur l'accès à l'information.

PROPOSED SECTION

(1) Subsection 810.1(1) of the Act is amended by replacing

(*a*) "151, 152, 155" with "151 or 152, subsection 153(1), section 155";

(*b*) "171 or 172.1" with "171, 171.1, 172.1 or 172.2";

(*c*) "173(2)" with "173(2) or 212(1), (2), (2.1) or (4)"; and

(*d*) "272 or 273" with "272, 273, 280 or 281".

(2) Paragraph 810.1(3.02)(*a*) of the Act is replaced by the following:

(*a*) prohibit the defendant from having any contact — including communicating by any means — with a person under the age of 16 years, unless the defendant does so under the supervision of a person whom the judge considers appropriate;

(*a.1*) prohibit the defendant from using the Internet or other digital network, unless the defendant does so in accordance with conditions set by the judge;

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 37

SUBJECT AND EFFECT

Section 810.1 enables a court to order a defendant, for whom there are reasonable grounds to fear may commit one of the enumerated child sexual offences, to enter into a recognizance and to abide by specific conditions that the court considers desirable to secure the good conduct of the defendant.

The amendment would expand the list of enumerated offences for which the recognizance could be ordered to include the two new offences proposed by this Bill (sections 171.1 – Making Sexually Explicit Material Available to Child and 172.2 – Agreement or Arrangement – Sexual Offence Against Child) as well as four child prostitution offences (subsections 212(1) – Procuring, 212(2) – Living on the avails of prostitution of person under 18 years, 212(2.1) – Aggravated offence in relation to living on the avails of prostitution of person under 18 years, and 212(4) – Offence-Prostitution of person under 18).

The proposed amendment would also broaden the focus of the conditions that may be imposed. Currently, section 810.1 includes conditions against engaging in any activity that involves contact with a young person including using a computer system for the purpose of communicating with a child as well as against attending places normally frequented by children. The proposed amendment would broaden these conditions to prohibiting any unsupervised contact with a young person under the age of 16 years (not just in "any activity that involves contact with a young person") and to prohibiting unsupervised use of the Internet or other digital network (and not just to the use of a computer system for the purpose of communicating with a child).

All other provisions governing recognizance orders under section 810.1 would remain as they currently exist.

REASON FOR CHANGE

The proposed expansion of the list of enumerated offences for which a recognizance order can be made would ensure consistent treatment of all child sexual offences. In addition to currently being allowed to order a recognizance for the existing listed offences, the proposed amendment would also allow a recognizance order to be made against persons for whom there are reasonable grounds to believe may commit one of the proposed new offences or any of the child prostitution offences.

The proposed amendment would also allow a court to consider imposing the two

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Divulgé(s) en vertu de la Loi sur l'accès à l'information.

new conditions as part of a recognizance for a defendant for whom there are reasonable grounds to fear may commit one of the enumerated sexual offences against a child. The proposed conditions seek to prevent the defendant from having the opportunity to sexually assault a young person or from having the opportunity to use of the Internet and other digital network to facilitate their sexual offending against young persons.

RELATED CLAUSE

Clause 16

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Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 38

PRESENT SECTION

(*b*) has been convicted under the *Criminal Code*, discharged under section 730 of that Act or, in the case of a young person, found guilty under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, or the *Youth Criminal Justice Act*, of, or has been found not criminally responsible on account of mental disorder for, (*offence*), which, on the day on which the offender was sentenced or discharged or the finding was made, was one of the following secondary designated offences within the meaning of section 487.04 of the *Criminal Code* (*check applicable box*):

(i) an offence under the *Criminal Code* for which the maximum punishment is imprisonment for five years or more and that was prosecuted by indictment,

(ii) an offence under any of sections 5 to 7 of the *Controlled Drugs and Substances Act* for which the maximum punishment is imprisonment for five years or more and that was prosecuted by indictment,

(iii) an offence under any of sections 145 to 148, subsection 160(3), sections 170, 173, 252, 264, 264.1, 266 and 270, paragraph 348(1)(*e*) and sections 349 and 423 of the *Criminal Code*,

(iv) an offence under section 433 or 434 of the *Criminal Code* as that section read from time to time before July 1, 1990, or

(v) an attempt or a conspiracy to commit an offence referred to in subparagraph (i) or (ii) that was prosecuted by indictment (*or, if applicable,* an attempt or a conspiracy to commit an offence referred to in subparagraph (iii) or (iv));

PROPOSED SECTION

38. Subparagraph (*b*)(iii) of Form 5.04 in Part XXVIII of the Act is replaced by the following:

(iii) an offence under any of sections 145 to 148, subsection 160(3), sections 170, 171.1, 173, 252, 264, 264.1, 266 and 270, paragraph 348(1)(*e*) and sections 349 and 423 of the *Criminal Code*,

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CLAUSE 38

SUBJECT AND EFFECT

The proposed amendment would add the proposed new offence, section 171.1 – Making sexually explicit material available to child, to the list of offences in Form 5.04 – Order Authorizing the Taking of Bodily Substances for Forensic DNA Analysis.

REASON FOR CHANGE

Form 5.04 must be updated to include the proposed new offence and for which the taking of a bodily substance for forensic DNA analysis is permitted but is not mandatory.

RELATED CLAUSE

Clause 21

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CLAUSE 39

PRESENT SECTION

5.(3) Every person who contravenes subsection (1) or (2)

(*a*) subject to subsection (4), where the subject-matter of the offence is a substance included in Schedule I or II, is guilty of an indictable offence and liable to imprisonment for life;

(4) Every person who contravenes subsection (1) or (2), where the subject-matter of the offence is a substance included in Schedule II in an amount that does not exceed the amount set out for that substance in Schedule VII, is guilty of an indictable offence

(5) For the purposes of applying subsection (3) or (4) in respect of an offence under subsection (1), a reference to a substance included in Schedule I, II, III or IV includes a reference to any substance represented or held out to be a substance included in that Schedule.

(6) For the purposes of subsection (4) and Schedule VII, the amount of the substance means the entire amount of any mixture or substance, or the whole of any plant, that contains a detectable amount of the substance.

PROPOSED SECTION

CONTROLLED DRUGS AND SUBSTANCES ACT

39. (1) Paragraph 5(3)(*a*) of the *Controlled Drugs and Substances Act* is replaced by the following:

(*a*) subject to <u>paragraph (a.1), if</u> the subject-matter of the offence is a substance included in Schedule I or II is guilty of an indictable offence and liable to imprisonment for life, <u>and</u>

(i) to a minimum punishment of imprisonment for a term of one year if

(A) the person committed the offence for the benefit of, at the direction of or in association with a criminal organization, as defined in subsection 467.1(1) of the *Criminal Code*,

(B) the person used or threatened to use violence in committing the offence,

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(C) the person carried, used or threatened to use a weapon in committing the offence, or

(D) the person was convicted of a designated substance offence, or had served a term of imprisonment for a designated substance offence, within the previous 10 years, or

(ii) to a minimum punishment of imprisonment for a term of two years if

(A) the person committed the offence in or near a school, on or near school grounds or in or near any other public place usually frequented by persons under the age of 18 years,

(B) the person committed the offence in a prison, as defined in section 2 of the *Criminal Code*, or on its grounds, or

(C) the person used the services of a person under the age of 18 years, or involved such a person, in committing the offence;

(*a.1*) if the subject-matter of the offence is a substance included in Schedule II in an amount that is not more than the amount set out for that substance in Schedule VII, is guilty of an indictable offence and liable to imprisonment for a term of not more than five years less a day;

(2) Subsections 5(4) to (6) of the Act are replaced by the following:

(5) For the purposes of applying subsection (3) in respect of an offence under subsection (1), a reference to a substance included in Schedule I, II, III or IV includes a reference to any substance represented or held out to be a substance included in that Schedule.

(6) For the purposes of paragraph (3)(*a.1*) and Schedule VII, the amount of the substance means the entire amount of any mixture or substance, or the whole of any plant, that contains a detectable amount of the substance.

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Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 39

SUBJECT AND EFFECT

Section 5 deals with the offences of trafficking in, and possession for the purpose of trafficking in, substances listed in Schedules I, II, III and IV.

Subsection 5(3) deals with the penalties relating to these offences.

The amendment to Paragraph 5(3)(*a*) establishes an escalating scale of minimum penalties for persons who traffic in substances listed in Schedule I (opium, heroin, cocaine, methamphetamine etc) or in substances listed in Schedule II (cannabis, cannabis resin, cannabis marijuana etc) if one or more aggravating factors are present at the time of the commission of the offence. The minimum penalties and the aggravating factors are listed below.

An offender would be liable to a minimum punishment of imprisonment for a term of one year if the offender

(A) committed the offence for the benefit of, at the direction of or in association with a criminal organization, as defined in subsection 467.1(1) of the *Criminal Code*,

(B) used or threatened to use violence in committing the offence,

(C) carried, used or threatened to use a weapon in committing the offence, or

(D) was convicted of a designated substance offence, or had served a term of imprisonment for a designated substance offence, within the previous 10 years.

An offender would be liable to a minimum punishment of imprisonment for a term of two years if the offender

(A) committed the offence in or near a school, on or near school grounds or in or near any other public place usually frequented by persons under the age of 18 years,

(B) committed the offence in a prison, as defined in section 2 of the *Criminal Code*, or on its grounds, or

(C) used the services of a person under the age of 18 years, or involved such a person, in committing the offence;

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Paragraph (3)(a.1) incorporates the old subsection 5(4) dealing with cases of trafficking in a Schedule II substance where the amount of cannabis resin or cannabis marijuana is equal to or less than 3 kilograms. The penalty for this offence is a maximum of five years imprisonment less a day.

Subsection 5(5) remains unchanged.

Subsection 5(6) is amended by adding the reference to paragraphs (3)(a.1).

REASON FOR CHANGE

The amendments reflect the Government's commitment to ensure that offenders who commit serious drug offences receive terms of imprisonment that correspond to the seriousness of their offences.

RELATED CLAUSE

None

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CLAUSE 40

PRESENT SECTION

6(3) Every person who contravenes subsection (1) or (2)

(a) where the subject-matter of the offence is a substance included in Schedule I or II, is guilty of an indictable offence and liable to imprisonment for life;

PROPOSED SECTION

40. Paragraph 6(3)(*a*) of the Act is replaced by the following:

(*a*) if the subject-matter of the offence is a substance included in Schedule I in an amount that is not more than one kilogram, or in Schedule II, is guilty of an indictable offence and liable to imprisonment for life, and to a minimum punishment of imprisonment for a term of one year if

(i) the offence is committed for the purposes of trafficking,

(ii) the person, while committing the offence, abused a position of trust or authority, or

(iii) the person had access to an area that is restricted to authorized persons and used that access to commit the offence;

(a.1) if the subject-matter of the offence is a substance included in Schedule I in an amount that is more than one kilogram, is guilty of an indictable offence and liable to imprisonment for life, and to a minimum punishment of imprisonment for a term of two years;

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CLAUSE 40

SUBJECT AND EFFECT

Section 6 deals with the importation and exportation of, and possession for the purpose of exportation of, substances listed in Schedules I, II, III, IV, V and VI.

Subsection 6(3) deal with the penalties relating to these offences.

This amendment to paragraph (3)(a) establishes a minimum penalty of one year imprisonment for persons who import, export or possess for the purpose of exporting a substance included in Schedule I in an amount that does not exceed one kilogram, or in Schedule II, if the offence is committed for the purpose of trafficking or if someone has abused his authority or position or abused his access to restricted area to commit the offence of importation/exportation and possession to export.

The new paragraph (3)(a.1) establishes a minimum penalty of two years imprisonment for persons who import, export or possess for the purpose of exporting a substance included in Schedule I if the substance exceeds one kilogram.

REASON FOR CHANGE

The amendments reflect the Government's commitment to ensure that offenders who commit the offences of importation, exportation and possession for the purpose of exportation involving Schedule I and II drugs receive terms of imprisonment that correspond to the seriousness of their offences.

RELATED CLAUSE

None

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CLAUSE 41 (as passed by the House of Commons)

PRESENT SECTION

7(2) Every person who contravenes subsection (1)

(*a*) where the subject-matter of the offence is a substance included in Schedule I or II, other than cannabis (marihuana), is guilty of an indictable offence and liable to imprisonment for life;

(*b*) where the subject-matter of the offence is cannabis (marihuana), is guilty of an indictable offence and liable to imprisonment for a term not exceeding seven years;

PROPOSED SECTION

41. (1) Paragraphs 7(2)(*a*) and *(b)* of the Act are replaced by the following:

(*a*) if the subject-matter of the offence is a substance included in Schedule I, is guilty of an indictable offence and liable to imprisonment for life and to a minimum punishment of imprisonment for a term of three years if any of the factors set out in subsection (3) apply and for a term of two years in any other case;

(*a.1*) if the subject-matter of the offence is a substance included in Schedule II, other than cannabis (marihuana), is guilty of an indictable offence and liable to imprisonment for life, and to a minimum punishment of imprisonment

(i) for a term of one year if the production is for the purpose of trafficking, or

(ii) for a term of 18 months if the production is for the purpose of trafficking and any of the factors set out in subsection (3) apply;

(*b*) if the subject-matter of the offence is cannabis (marihuana), is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years, and to a minimum punishment of

(i) imprisonment for a term of six months if the number of plants produced is less than 201 and more than 5, and the production is for the purpose of trafficking,

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(ii) imprisonment for a term of nine months if the number of plants produced is less than 201 and more than five, the production is for the purpose of trafficking and any of the factors set out in subsection (3) apply,

(iii) imprisonment for a term of one year if the number of plants produced is more than 200 and less than 501,

(iv) imprisonment for a term of 18 months if the number of plants produced is more than 200 and less than 501 and any of the factors set out in subsection (3) apply,

(v) imprisonment for a term of two years if the number of plants produced is more than 500, or

(vi) imprisonment for a term of three years if the number of plants produced is more than 500 and any of the factors set out in subsection (3) apply;

(2) Section 7 of the Act is amended by adding the following after subsection (2):

(3) The following factors must be taken into account in applying paragraphs (2)(*a*) to (*b*):

(*a*) the person used real property that belongs to a third party in committing the offence;

(*b*) the production constituted a potential security, health or safety hazard to persons under the age of 18 years who were in the location where the offence was committed or in the immediate area;

(*c*) the production constituted a potential public safety hazard in a residential area; or

(*d*) the person set or placed a trap, device or other thing that is likely to cause death or bodily harm to another person in the location where the offence was committed or in the immediate area, or permitted such a trap, device or other thing to remain or be placed in that location or area.

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CLAUSE 41 (as passed by the House of Commons)

SUBJECT AND EFFECT

Section 7 deals with the offence of production in substances listed in Schedule I, II, III and IV.

Subsection 7(2) deals with the penalties relating to this offence.

The amendment to **Paragraph 7(2)(a) and (b)** establishes a minimum penalty for persons who produce substances listed in Schedule I (opium, heroin, cocaine, methamphetamine etc) or substances listed in Schedule II (cannabis, cannabis resin, cannabis marijuana etc) if one or more aggravating factors are present at the time of the commission of the offence. The minimum penalties and the aggravating factors are listed below.

The new **paragraph (a)** establishes a minimum penalty for someone who produces a substance listed in Schedule I. The penalty is two years imprisonment generally and is three years imprisonment if any of the aggravating factors listed in **subsection 3** applies.

The new **paragraph (a.1)** establishes a minimum penalty for someone who produces a substance listed in Schedule II, other than cannabis marijuana. The penalty is one year imprisonment if the offence is committed for the purpose of trafficking and 18 months imprisonment if the offence is committed for the purpose of trafficking and if any of the aggravating factors listed in **subsection 3** applies.

The new **paragraph (b)** establishes a new maximum of 14 years imprisonment and an escalading scale of minimum penalties for someone who produces cannabis (marihuana). The person is guilty of an indictable offence and liable to imprisonment for a term not exceeding 14 years, and to a minimum punishment of:

(i) imprisonment for a term of six months if the number of plants produced is less than 201 and more than five, and the production is for the purpose of trafficking,

(ii) imprisonment for a term of nine months if the number of plants produced is less than 201 and more than five, the production is for the purpose of trafficking and if any of the factors listed in **subsection 3** apply:

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(iii) imprisonment for a term of one year if the number of plants produced is more than 200 and less than 501,

(iv) imprisonment for a term of two years if the number of plants produced is more than 500.

The penalties for (iii) and (iv) above are increased by 50% if any of the factors listed in **subsection 3** apply:

Subsection 3 lists the aggravating factors that will lead to a greater minimum penalty if any of these factors applies to offences referred to above:

(*a*) the person used real property that belongs to a third party in committing the offence;

(*b*) the production constituted a potential security, health or safety hazard to persons under the age of 18 years who were in the location where the offence was committed or in the immediate area;

(*c*) the production constituted a potential public safety hazard in a residential area; or

(*d*) the person set or placed a trap, device or other thing that is likely to cause death or bodily harm to another person in the location where the offence was committed or in the immediate area, or permitted such a trap, device or other thing to remain or be placed in that location or area.

REASON FOR CHANGE

Drug production has significant social impacts on communities. Communities can become vulnerable to petty crime, social disorder, associated risks to health, increases in violence, and increased risk to law enforcement. Marijuana and methamphetamine production operations pose serious health and public safety hazards to those in or around them. They produce environmental hazards, pose clean-up problems and endanger the lives and health of communities. This, in turn, has caused many Canadians to fear for their safety.

The amendments reflect the Government's commitment to ensure that offenders who commit production offences involving Schedule I and II drugs and endanger communities receive terms of imprisonment that correspond to the seriousness of their offences.

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This Clause was amended by the Standing Committee on Justice and Human Rights. A motion to amend, introduced by the Government and adopted by the Committee, amended paragraph (2)(b)(ii). The provision deals with the imposition of at least nine months imprisonment for the offence of producing one to 200 plants inclusively where the production is for the purpose of trafficking and where there are certain aggravating factors. The adoption of this motion narrowed the offence such that the minimum penalty would now apply to instances where more than 5 plants but less than 201 plants are produced and where the production is for the purpose of trafficking and there are certain aggravating factors. Accordingly, the minimum penalty would no longer apply to the production of five plants or less.

RELATED CLAUSE

None

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CLAUSE 42

PRESENT SECTION

Non applicable

PROPOSED SECTION

42. The Act is amended by adding the following after section 7:

Notice

8. The court is not required to impose a minimum punishment unless it is satisfied that the offender, before entering a plea, was notified of the possible imposition of a minimum punishment for the offence in question and of the Attorney General's intention to prove any factors in relation to the offence that would lead to the imposition of a minimum punishment.

Report to Parliament

9. (1) Within five years after this section comes into force, a comprehensive review of the provisions and operation of the Act, including a cost benefit analysis of mandatory minimum sentences, shall be undertaken by any committee of the Senate, of the House of Commons or of both Houses of Parliament that may be designated or established for that purpose.

(2) The committee referred to in subsection (1) shall, within one year after a review is undertaken under that subsection, submit a report to Parliament including a statement of any changes the committee recommends.

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CLAUSE 42

SUBJECT AND EFFECT

These are new sections. Section 8 requires the Crown prosecutor to give notice that a minimum penalty will be sought and that it intends to prove factors relating to the offence that will lead to the imposition of a minimum penalty.

Section 9 requires that a Parliamentary Committee undertake a comprehensive review of the provisions and operations of the Bill five years after it comes into force.

REASON FOR CHANGE

The notice requirement will ensure that the accused is not caught unaware that the prosecution proposes to seek a minimum penalty for the offence charged against him. The notice will allow the accused to prepare his defence accordingly.

The requirement that Parliament undertake a review of the Bill five years after the Bill comes into force.

RELATED CLAUSE

None

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CLAUSE 43

PRESENT SECTION

10(2) If a person is convicted of a designated substance offence, the court imposing sentence on the person shall consider any relevant aggravating factors including that the person

PROPOSED SECTION

43. (1) The portion of subsection 10(2) of the Act before paragraph (*a*) is replaced by the following:

(2) If a person is convicted of a designated substance offence for which the court is not required to impose a minimum punishment, the court imposing sentence on the person shall consider any relevant aggravating factors including that the person

(2) Section 10 of the Act is amended by adding the following after subsection (3):

(4) A court sentencing a person who is convicted of an offence under this Part may delay sentencing to enable the offender

a) to participate in a drug treatment court program approved by the Attorney General; or

b) to attend a treatment program under subsection 720(2) of the Criminal Code.

(5) If the offender successfully completes a program under paragraph (4), the court is not required to impose the minimum punishment for the offence for which the person was convicted.

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CLAUSE 43

SUBJECT AND EFFECT

Section 10 deals with the purpose of sentencing in drug cases and lists factors that a court must consider when imposing a sentence and where the court must give reasons for not imposing a term of imprisonment when one of the listed factors is present.

The amendment to subsection 10(2) inserts the reference to the minimum penalty thereby ensuring that minimum penalties are taken into account.

The new subsection 10(4) will allow a court to delay the imposition of the sentence so as to enable the offender to participate in a drug treatment program approved by the Attorney General or to attend a treatment program under subsection 720(2) of the Criminal Code.

The new subsection 10(5) will permit the court to impose a penalty other than the minimum penalty if the offender has successfully completed the treatment program.

REASON FOR CHANGE

A significant proportion of individuals applying for admission into drug treatment courts are individuals who have committed prior serious drug offences, most notably trafficking and possession for the purposes of trafficking. These offenders would receive minimum penalties if the proposed regime is implemented. Creating an exemption for treatment programs would allow for the continued use of treatment programs for these offenders and for offenders to receive a penalty other than the minimum penalty.

RELATED CLAUSE

None

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CLAUSE 44

PRESENT SECTION

New

PROPOSED SECTION

44. Schedule I to the Act is amended by adding the following after item 18:

19. Amphetamines, their salts, derivatives, isomers and analogues and salts of derivatives, isomers and analogues including:

(1) amphetamine (a–methylbenzeneethanamine)

(2) N–ethylamphetamine (N–ethyl–a–methylbenzeneethanamine)

(3) 4–methyl–2,5–dimethoxyamphetamine (STP) (2,5–dimethoxy–4,a–dimethylbenzeneethanamine)

(4) 3,4–methylenedioxyamphetamine (MDA) (a–methyl–1,3–benzodioxole–5–ethanamine)

(5) 2,5–dimethoxyamphetamine (2,5–dimethoxy–a–methylbenzeneethanamine)

(6) 4–methoxyamphetamine (4–methoxy–a–methylbenzeneethanamine)

(7) 2,4,5–trimethoxyamphetamine (2,4,5–trimethoxy–a–methylbenzeneethanamine)

(8) N–methyl–3,4–methylenedioxyamphetamine (N,a–dimethyl–1,3–benzodioxole–5–ethanamine)

(9) 4–ethoxy–2,5–dimethoxyamphetamine (4–ethoxy–2,5–dimethoxy–a–methylbenzeneethanamine)

(10) 5–methoxy–3,4–methylenedioxyamphetamine (7–methoxy–a–methyl–1,3–benzodioxole –5–ethanamine)

(11) N,N–dimethyl–3,4–methylenedioxyamphetamine (N,N, a–trimethyl–1,3–benzodioxole–5– ethanamine)

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(12) N–ethyl–3,4–methylenedioxyamphetamine (N–ethyl–a–methyl–1,3–benzodioxole–5–ethanamine)

(13) 4–ethyl–2,5–dimethoxyamphetamine (DOET) (4–ethyl–2,5–dimethoxy–a–methylbenzeneethanamine)

(14) 4–bromo–2,5–dimethoxyamphetamine (4–bromo–2,5–dimethoxy–a–methylbenzeneethanamine)

(15) 4–chloro–2,5–dimethoxyamphetamine (4–chloro–2,5–dimethoxy–a–methylbenzeneethanamine)

(16) 4–ethoxyamphetamine (4–ethoxy–a–methylbenzeneethanamine)

(17) Benzphetamine (N–benzyl–N,a–dimethylbenzeneethanamine)

(18) N–Propyl–3,4–methylenedioxyamphetamine (a–methyl–N–propyl–1,3–benzodioxole –5–ethanamine)

(19) N–(2–Hydroxyethyl)–a–methylbenzeneethanamine

(20) N-hydroxy-3,4-methylenedioxyamphetamine (N-[a-methyl-3,4-(methylenedioxy)phenethyl] hydroxylamine)

(21) 3,4,5-trimethoxyamphetamine (3,4,5-trimethoxy-a-methylbenzeneethanamine)

20. Flunitrazepam (5-(o-fluorophenyl)-1,3-dihydro-1-methyl-7-nitro-2H-1,4-benzodiazepin-2-one) and any of its salts or derivatives

21. 4-hydroxybutanoic acid (GHB) and any of its salts

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CLAUSE 44

SUBJECT AND EFFECT

The amendment transfers all of the amphetamines, their salts, derivatives, isomers and analogues and salts of derivatives, isomers and analogues from Schedule III to Schedule I of the Controlled Drugs and Substance Act.

The amendment would also transfer the date rape drugs flunitrazepam (Rohypnol) and hydroxybutanoic acid (GHB) from Schedule III to Schedule I.

The result of this amendment will be to subject any drug offences involving amphetamines or their analogues or derivatives and the date rape drugs Rohypnol and GHB to higher penalties. These higher penalties would be the same as for drug offences involving cocaine or heroin.

REASON FOR CHANGE

The abuse of methamphetamine is a symptom of a much larger problem regarding the abuse of synthetic drugs in Canada. Both methamphetamine (MA) and ecstasy (MDMA or N-methyl - 3,4-methylenedioxyamphetamine) belong to the amphetamine class of drugs. While the effects of the different substances belonging to this class of drugs vary, many of the substances within the class are subject to abuse and misuse. According to the Canadian Addiction Survey (CAS 2004), an estimated 6.4% of Canadians have tried 'speed' (which includes methamphetamine and amphetamine) at some time in their life. Among users (lifetime and within the last 12 months), use of MDMA was more common than methamphetamine.

Amphetamine type drugs, including methamphetamine which is a derivative of amphetamine, can be produced synthetically in clandestine laboratories with relative ease. Manipulation of the chemical structure of one amphetamine-type drug can create a new amphetamine-type drug (e.g. a derivative, isomer or analogue) with similar or more potent effects. As the laws and penalties become more severe with respect to one substance in the class, there can be a shift to illicit production of another drug in the class which may cause a similar level of harm.

In addition to the negative effects of the drug itself, the production of synthetic drugs involves the use of chemicals that are poisonous, corrosive, flammable, and explosive or emit toxic vapours. This collateral damage can cause serious health and safety problems at the production site and within the surrounding community. These risks are similar in the production of most synthetic drugs.

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The impact of methamphetamine production in Canada is well known. Methamphetamine was moved from Schedule III to Schedule I of the Controlled Drugs and Substance Act in August 2005 to provide access to higher maximum penalties for illegal activities involving methamphetamine that put the health and safety of individuals and communities at risk. Intelligence from law enforcement agencies in Canada and statistics on drug analysis maintained by Health Canada suggests that production of MDMA is now on the rise in Canada. The U.S. Drug Enforcement Agency has expressed concern about the increased quantities of MDMA being smuggled into the United States from Canada.

To address the trends observed with MDMA and minimize the risk of a future shifts to production of other drugs in this class because of lower penalties, all members of the amphetamine class of drugs should be treated in the same manner as methamphetamine. The re-scheduling of all amphetamines presently listed under item 1 of Schedule III to the Controlled Drugs and Substance Act would also preclude potential arguments in a court of law that a new amphetamine-type drug is a derivative of an amphetamine rather than methamphetamine and therefore subject to lower maximum penalties (and not subject to minimum penalties).

A large number of women who contact the Canadian Sexual Assault Centre each year report that drugs were a factor in a rape. Reports from the police and emergency departments suggest that the use of these drugs, particularly GHB, in sexual assaults is increasing, though alcohol remains the substance most likely involved. Flunitrazepam (Rohypnol) and ketamine are other drugs used to facilitate date-rape. Among these three, GHB is more frequently used in Canada in drug-facilitated date rape because it can be manufactured synthetically using industrial chemicals which are now controlled under the Precursor Control Regulations (GBL and 1,4-butanediol).

Ketamine is currently found in Schedule I to the Controlled Drugs and Substance Act while both GHB and flunitrazepam are in Schedule III. Because all three drugs can be used in the same type of crime, all three should have the same penalties associated with offences for possession, production and trafficking.

RELATED CLAUSE

None

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CLAUSE 45

PRESENT SECTION

1. Amphetamines, their salts, derivatives, isomers and analogues and salts of derivatives, isomers and analogues including:

(1) amphetamine (a–methylbenzeneethanamine)

(2) [Repealed, SOR/2005–235, s. 2]

(3) N–ethylamphetamine (N–ethyl–a–methylbenzeneethanamine)

(4) 4–methyl–2,5–dimethoxyamphetamine (STP) (2,5–dimethoxy–4,a–dimethylbenzeneethanamine)

(5) 3,4–methylenedioxyamphetamine (MDA) (a–methyl–1,3–benzodioxole–5–ethanamine)

(6) 2,5–dimethoxyamphetamine (2,5–dimethoxy–a–methylbenzeneethanamine)

(7) 4–methoxyamphetamine (4–methoxy–a–methylbenzeneethanamine)

(8) 2,4,5–trimethoxyamphetamine (2,4,5–trimethoxy–a–methylbenzeneethanamine)

(9) N–methyl–3,4–methylenedioxyamphetamine (N,a–dimethyl–1,3–benzodioxole–5–ethanamine)

(10) 4–ethoxy–2,5–dimethoxyamphetamine (4–ethoxy–2,5–dimethoxy–a–methylbenzeneethanamine)

(11) 5–methoxy–3,4–methylenedioxyamphetamine (7–methoxy–a–methyl–1,3–benzodioxole–5–ethanamine)

(12) N,N–dimethyl–3,4–methylenedioxyamphetamine (N,N, a–trimethyl–1,3–benzodioxole–5–ethanamine)

(13) N–ethyl–3,4–methylenedioxyamphetamine (N–ethyl–a–methyl–1,3–benzodioxole–5–ethanamine)

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Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(14) 4–ethyl–2,5–dimethoxyamphetamine (DOET) (4–ethyl–2,5–dimethoxy–a–methylbenzeneethanamine)

(15) 4–bromo–2,5–dimethoxyamphetamine (4–bromo–2,5–dimethoxy–a–methylbenzeneethanamine)

(16) 4–chloro–2,5–dimethoxyamphetamine (4–chloro–2,5–dimethoxy–a–methylbenzeneethanamine)

(17) 4–ethoxyamphetamine (4–ethoxy–a–methylbenzeneethanamine)

(18) Benzphetamine (N–benzyl–N,a–dimethylbenzeneethanamine)

(19) N–Propyl–3,4–methylenedioxyamphetamine (a–methyl–N–propyl–1,3–benzodioxole–5–ethanamine)

(20) N–(2–Hydroxyethyl)–a–methylbenzeneethanamine

(21) N-hydroxy-3,4-methylenedioxyamphetamine (N-[α-methyl-3,4-(methylenedioxy) phenethyl] hydroxylamine)

(22) 3,4,5-trimethoxyamphetamine (3,4,5-trimethoxy-α-methylbenzeneethanamine)
but not including

(23) Methamphetamine (N,α-dimethylbenzeneethanamine)

PROPOSED SECTION

45. Item 1 of Schedule III to the Act is repealed.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 45

SUBJECT AND EFFECT

This amendment repeals item 1 (amphetamines) from Schedule III of the Controlled Drugs and Substance Act.

REASON FOR CHANGE

This amendment is consequential to the amendment which transfers item 1 in Schedule III to Schedule 1 of the Controlled Drugs and Substance Act.

RELATED CLAUSE

None

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 46

PRESENT SECTION

25. Flunitrazepam (5-(o-fluorophenyl)-1,3-dihydro-1-methyl-7-nitro-2H-1,4-benzodiazepin-2-one) and any salts or derivatives thereof

26. 4-hydroxybutanoic acid (GHB) and any salt thereof

PROPOSED SECTION

46. Items 25 and 26 of Schedule III to the Act are repealed.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 46

SUBJECT AND EFFECT

This amendment repeals item 25 (Flunitrazepam) and 26 (hydroxybutanoic acid) from Schedule III of the Controlled Drugs and Substance Act.

REASON FOR CHANGE

This amendment is consequential to the amendment which transfers items 25 and 26 in Schedule III to Schedule 1 of the Controlled Drugs and Substance Act.

RELATED CLAUSE

None

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 47

PRESENT SECTION

8. Paragraph 515(4.1)(*c*) of the Act is replaced by the following:

(*c*) an offence relating to the contravention of subsection 5(1) or (2), 6(1) or (2) or 7(1) of the Controlled Drugs and Substances Act,

PROPOSED SECTION

An Act to amend the Criminal Code (firearms) and the Firearms Act

47. Section 8 of *An Act to amend the Criminal Code (firearms) and the Firearms Act*, is repealed.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 47

SUBJECT AND EFFECT

This amendment repeals section 8 of An Act to amend the Criminal Code (firearms) and the Firearms Act, chapter 8 of the Statutes of Canada, 2003.

REASON FOR CHANGE

The amendment contained in section 8 of An Act to amend the Criminal Code (firearms) and the Firearms Act, chapter 8 of the Statutes of Canada, 2003 is replaced by a similar amendment contained in Clause 32 (1) of this Act.

RELATED CLAUSE

None

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 48

PRESENT SECTION

"designated offence" means

(*a*) an offence that is punishable under section 130 that is

. . .

(ii) contrary to subsection 5(3), 6(3) or 7(2) of the *Controlled Drugs and Substances Act* and punishable by imprisonment for life, or

PROPOSED SECTION

National Defence Act

48. Subparagraph (*a*)(ii) of the definition "designated offence" in section 153 of the English version of the *National Defence Act* is replaced by the following:

(ii) an offence punishable by imprisonment for life under subsection 5(3), 6(3) or 7(2) of the *Controlled Drugs and Substances Act*, or

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 48

SUBJECT AND EFFECT

This amendment is technical and editorial only and presents a new style of drafting.

REASON FOR CHANGE

The amendment reflects a new drafting style.

RELATED CLAUSE

None

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 49

PRESENT SECTION

(Section 4 and subsection 6.3(9))

1. Offences

(*a*) under the following provisions of the *Criminal Code*:

(i) section 151 (sexual interference with a person under 16),

(ii) section 152 (invitation to a person under 16 to sexual touching),

(iii) section 153 (sexual exploitation of a person 16 or more but under 18),

(iv) subsection 160(3) (bestiality in the presence of a person under 16 or inciting a person under 16 to commit bestiality),

(v) section 163.1 (child pornography),

(vi) section 170 (parent or guardian procuring sexual activity),

(vii) section 171 (householder permitting sexual activity),

(viii) section 172 (corrupting children),

(ix) section 172.1 (luring a child),

(x) subsection 173(2) (exposure),

(xi) subsection 212(2) (living on avails of prostitution of a person under 18),

(xii) subsection 212(2.1) (aggravated offence — living on avails of prostitution of a person under 18),

(xiii) subsection 212(4) (obtain, or attempt to obtain, sexual services of a person under 18),

(xiv) paragraph 273.3(1)(*a*) (removal of child under 16 from Canada for purposes of listed offences),

(xv) paragraph 273.3(1)(*b*) (removal of child 16 or more but under 18 from Canada for purpose of listed offence),

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(xvi) paragraph 273.3(1)(*c*) (removal of child under 18 from Canada for purposes of listed offences),

(xvii) paragraph 348(1)(*a*) with respect to breaking and entering a place with intent to commit in that place an indictable offence listed in any of subparagraphs (i) to (xvi), and

(xviii) paragraph 348(1)(*b*) with respect to breaking and entering a place and committing in that place an indictable offence listed in any of subparagraphs (i) to (xvi);

(*b*) under the following provisions of the *Criminal Code*, R.S.C. 1970, c. C-34, as that Act read before January 1, 1988:

(i) section 166 (parent or guardian procuring defilement), and

(ii) section 167 (householder permitting defilement);

(*c*) that are referred to in paragraph (*a*) and that are punishable under section 130 of the *National Defence Act*;

(*d*) that are referred to in paragraph (*b*) and that are punishable under section 120 of the *National Defence Act*, R.S.C. 1970, c. N-4; and

(*e*) of attempt or conspiracy to commit an offence referred to in any of paragraphs (*a*) to (*d*).

PROPOSED SECTION

CONSEQUENTIAL AMENDMENTS

Criminal Records Act

(1) Paragraph 1(*a*) of Schedule 1 to the *Criminal Records Act* is amended by adding the following after subparagraph (vii):

(vii.1) paragraph 171.1(1)(*a*) (making sexually explicit material available to child under 18 for purposes of listed offences),

(vii.2) paragraph 171.1(1)(*b*) (making sexually explicit material available to child under 16 for purposes of listed offences),

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(vii.3) paragraph 171.1(1)(*c*) (making sexually explicit material available to child under 14 for purposes of listed offences),

(2) Paragraph 1(*a*) of Schedule 1 to the *Criminal Records Act* is amended by adding the following after subparagraph (ix):

(ix.1) paragraph 172.2(1)(*a*) (agreement or arrangement – listed sexual offence against child under 18),

(ix.2) paragraph 172.2(1)(*b*) (agreement or arrangement – listed sexual offence against child under 16),

(ix.1) paragraph 172.2(1)(*c*) (agreement or arrangement – listed sexual offence against child under 14),

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Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 49

SUBJECT AND EFFECT

The proposed amendment would add the two new offences in sections 171.1 – Making sexually explicit material available to child and 172.2 – Agreement or arrangement – sexual offence against child to Schedule 1 of the *Criminal Records Act*.

The effect of this change would be to ensure that persons convicted of the new offences are ineligible to apply for a record suspension until five years after their conviction for either offence on indictment or three years after their conviction for either offence on summary conviction.

REASON FOR CHANGE

The proposed amendment would ensure consistent treatment of these offences with other similar child sexual offences for the purposes of applying for a record suspension.

RELATED CLAUSES

Clauses 21 and 23 and Part 3 (Clauses 108 – 165)

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 50

PRESENT SECTION

50.147.1 (1) Where a person is convicted by a court martial of an offence
…

(*c*) relating to the contravention of subsection 5(3) or (4), 6(3) or 7(2) of the *Controlled Drugs and Substances Act*, or
…

the court martial shall, in addition to any other punishment that may be imposed for that offence, consider whether it is desirable, in the interests of the safety of the person or of any other person, to make an order prohibiting the person from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things, and where the court martial decides that it is so desirable, the court martial shall so order.

PROPOSED SECTION

National Defence Act

50. Paragraph 147.1(1)(*c*) of the *National Defence Act* is replaced by the following:

(*c*) relating to the contravention of <u>any of sections</u> 5 <u>to</u> 7 of the *Controlled Drugs and Substances Act*, or

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CLAUSE 50

SUBJECT AND EFFECT

This amendment ensures that the new provisions dealing with minimum penalties for the offences listed in sections 5, 6 and 7 of the Controlled Drugs and Substance Act are reflected in paragraph 147.1(1)(c) of the National Defence Act which deals with imposing restrictions on the possession of certain weapons if someone is convicted by court martial for having committed certain offences under the Controlled Drugs and Substance Act.

REASON FOR CHANGE

This amendment is consequential to the amendments creating new minimum penalties in the Controlled Drugs and Substance Act.

RELATED CLAUSE

None

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 51

PRESENT PARAGRAPH

Not applicable

PROPOSED SECTION

51. The provisions of this Part, other than subsection 32(2) and section 48, come into force on a day or days to be fixed by order of the Governor in Council.

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CLAUSE 51

SUBJECT AND EFFECT

The clause provides for the coming into force of the provisions of Part 2 of the Bill, other than subsection 32(2) and section 48 on a day or days to be fixed by Order in Council rather than upon Royal Assent.

REASON FOR CHANGE

Ensuring that the amendments, except for subsection 32(2) and section 48, will come into force upon proclamation rather than upon Royal Assent will provide the Provinces and Territories, who are primarily responsible for the administration of justice, with an opportunity to prepare to implement these changes.

RELATED CLAUSES

Clauses 10 to 50

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CLAUSE 52

PRESENT SUBSECTION

2. (1) "victim"

(*a*) means a person to whom harm was done or who suffered physical or emotional damage as a result of the commission of an offence, and

(*b*) where the person is dead, ill or otherwise incapacitated, the person's spouse, an individual who is cohabiting, or was cohabiting at the time of the person's death, with the person in a conjugal relationship, having so cohabited for a period of at least one year, any relative or dependant of the person, or anyone who has in law or fact custody or is responsible for the care or support of the person;

PROPOSED SECTION

CORRECTIONS AND CONDITIONAL RELEASE ACT

52. (1) The definition "victim" in subsection 2(1) of the *Corrections and Conditional Release Act* is replaced by the following:

"victim" means a person to whom harm was done or who suffered physical or emotional damage as a result of the commission of an offence and, if the person is dead, ill or otherwise incapacitated,

(*a*) the person's spouse or an individual who is — or was at the time of the person's death — cohabiting with them in a conjugal relationship, having so cohabited for a period of at least one year,

(*b*) a relative or dependant of the person,

(*c*) anyone who has in law or fact custody, or is responsible for the care or support, of the person, or

(*d*) anyone who has in law or fact custody, or is responsible for the care or support, of a dependant of the person;

(2) Subsection 2(1) of the Act is amended by adding the following in alphabetical order:

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"provincial parole board" has the same meaning as in Part II;

"unescorted temporary absence" has the same meaning as in Part II;

"working day" means a day on which offices of the federal public administration are generally open in the province in question.

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CLAUSE 52

SUBJECT AND EFFECT

The proposed amendment clarifies the definition of victim in Part 1 of the Act such that those individuals and organizations (e.g., Children's Aid Society, legal guardian) who care for dependents of a victim who is dead, ill or incapacitated are included in the definition.

The proposed amendment also would add "provincial parole boards", "unescorted temporary absences" and "working day" to the definitions in Part 1 of the Act.

REASON FOR CHANGE

The current legislation is unclear with respect to the provision of offender information by the National Parole Board (Board) and Correctional Service of Canada (Service) directly to these individuals and organizations who have a responsibility for the care and support of dependents of a victim.

> The definition of provincial parole board was added in order to have the same meaning as in subsection 99(1) of Part II which states: ""*provincial parole board*" means the Ontario Board of Parole, la Commission québécoise des libérations conditionelles, the Board of Parole for the Province of British Columbia or any other parole board established by the legislature or the lieutenant governor in council of a province".

The definition of Unescorted Temporary Absence was added in order to have the same meaning as in Part II which states: "*unescorted temporary absence*" means an unescorted absence from a penitentiary authorized under section 116.

"Working day" was added in order to have the same meaning as in Part II which states: " working day" means a day on which offices in the federal public administration are generally open in the province in question".

RELATED CLAUSES

Clauses 54, 55, 57, 64, 70, 71, 74, 83, 92, 96(2), 98, 101 and 123

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CLAUSE 53

PRESENT SUBSECTION

PURPOSE

PROPOSED SECTION

53. The heading before section 3 of the Act is replaced by the following:

PURPOSE AND PRINCIPLES

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CLAUSE 53

SUBJECT AND EFFECT

The amendment adds the notion of principles to the title preceding section 3 of the Act.

REASON FOR CHANGE

The amendment amalgamates the title for principles and purpose sections.

RELATED CLAUSE

Clause 54

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CLAUSE 54

PRESENT SUBSECTION

PRINCIPLES

4. The principles that shall guide the Service in achieving the purpose referred to in section 3 are:

(*a*) that the protection of society be the paramount consideration in the corrections process;

(*b*) that the sentence be carried out having regard to all relevant available information, including the stated reasons and recommendations of the sentencing judge, other information from the trial or sentencing process, the release policies of, and any comments from, the National Parole Board, and information obtained from victims and offenders;

(*c*) that the Service enhance its effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system, and through communication about its correctional policies and programs to offenders, victims and the public;

(*d*) that the Service use the least restrictive measures consistent with the protection of the public, staff members and offenders;

(*e*) that offenders retain the rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence;

(*f*) that the Service facilitate the involvement of members of the public in matters relating to the operations of the Service;

(*g*) that correctional decisions be made in a forthright and fair manner, with access by the offender to an effective grievance procedure;

(*h*) that correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and be responsive to the special needs of women and aboriginal peoples, as well as to the needs of other groups of offenders with special requirements;

(*i*) that offenders are expected to obey penitentiary rules and conditions governing temporary absence, work release, parole and statutory release, and to actively participate in programs designed to promote their rehabilitation and reintegration; and

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(i) appropriate career development opportunities,

(ii) good working conditions, including a workplace environment that is free of practices that undermine a person's sense of personal dignity, and

(iii) opportunities to participate in the development of correctional policies and programs.

PROPOSED SECTION

54. Section 4 of the Act and the heading before it are replaced by the following:

3.1 The protection of society is the paramount consideration for the Service in the corrections process.

4. The principles that guide the Service in achieving the purpose referred to in section 3 are as follows:

(*a*) the sentence is carried out having regard to all relevant available information, including the stated reasons and recommendations of the sentencing judge, the nature and gravity of the offence, the degree of responsibility of the offender, information from the trial or sentencing process, the release policies of and comments from the National Parole Board and information obtained from victims, offenders and other components of the criminal justice system;

(*b*) the Service enhances its effectiveness and openness through the timely exchange of relevant information with victims, offenders and other components of the criminal justice system and through communication about its correctional policies and programs to victims, offenders and the public;

(*c*) the Service uses measures that are consistent with the protection of society, staff members and offenders and that are limited to only what is necessary and proportionate to attain the purposes of this Act;

(d) offenders retain the rights of all members of society except those that are, as a consequence of the sentence, lawfully and necessarily removed or restricted;

(*e*) the Service facilitates the involvement of members of the public in matters relating to the operations of the Service;

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Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(*f*) correctional decisions are made in a forthright and fair manner, with access by the offender to an effective grievance procedure;

(*g*) correctional policies, programs and practices respect gender, ethnic, cultural and linguistic differences and are responsive to the special needs of women, aboriginal peoples, persons requiring mental health care and other groups;

(*h*) offenders are expected to obey penitentiary rules and conditions governing temporary absences, work release, parole, statutory release and long-term supervision and to actively participate in meeting the objectives of their correctional plans, including by participating in programs designed to promote their rehabilitation and reintegration; and

(*i*) staff members are properly selected and trained and are given

(i) appropriate career development opportunities,

(ii) good working conditions, including a workplace environment that is free of practices that undermine a person's sense of personal dignity, and

(iii) opportunities to participate in the development of correctional policies and programs.

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CLAUSE 54

SUBJECT AND EFFECT

Clause 54 replaces section 4. It makes a number of changes aimed at clarifying and updating the Act.

REASON FOR CHANGE

Subsection 3.1 separates "protection of society" from the principles that guide the Service clarifying that the protection of society is the paramount consideration for the Service in the corrections process.

Subsection 4(a) adds to the prescribed list of information taken into account when carrying out the sentence to also include: Information about the nature and gravity of the offence and the degree of responsibility of the offender, and offenders and other components of the criminal justice system (e.g., police services).

Subsection 4(b) adds specific reference to victims and offenders as groups with whom the Service engages in open communication.

Subsection 4(c) emphasizes the protection of society as the central principle in the measures used by the Service, and modernizes the concept of the "least restrictive principle" to measures that are "limited to only what is necessary and proportionate to attain the purposes of the Act". This update is consistent with the recommendations of the 2007 Independent Review of CSC ("Sampson Report").

Subsection 4(d) provides that offenders retain all rights that are not lawfully removed or restricted as a consequence of the sentence. This paragraph also removes reference to the term "privileges".

Subsection 4(e) makes a grammatical correction to the Act, adding an "s" to "facilitate".

Subsection 4(f) replaces "be" with "are".

Subsection 4(g) adds offenders with mental health needs as a group with special needs in response to the Sampson Report Recommendation 2(h). The Panel recognized that the pervasiveness of mental disorders among offenders is a

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serious concern for the Service. Mental disorders occur in the offender population much more frequently than in the general public (with a significant increase in recent years), and are more common among women offenders than among men. This amendment emphasizes the special attention required of this correctional population.

Subsection 4(h) includes Long Term Supervision as a form of conditional release in the principles that guide the Service, and includes reference to correctional plan. Long term supervision orders were created in 1997 and need to be specified as a type of supervision. This amendment makes it clear that offenders under a Long Term Supervision Order are as accountable as offenders under other types of release. In addition, it responds to the Sampson Report Recommendation 2(i) resulting from the Panel's recommendation that the Act should define offender responsibilities. Including reference to the correctional plan is designed to strengthen the Act in this regard, as the correctional plan sets out an offender's expected program participation and other goals and responsibilities during the sentence.

Subsection 4(i) Replaces "be" with "are".

RELATED CLAUSES
Clauses 52, 53, 55, 57, 58, 59, 61, 62, 63, 64, 65, 66 and 71

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CLAUSE 55

PRESENT SUBSECTION

Not applicable

PROPOSED SECTION

CORRECTIONAL PLANS

15.1 (1) The institutional head shall cause a correctional plan to be developed in consultation with the offender as soon as practicable after their reception in a penitentiary. The plan is to contain, among others, the following:

(*a*) the level of intervention in respect of the offender's needs; and

(*b*) objectives for

(i) the offender's behaviour, including

(A) to conduct themselves in a manner that demonstrates respect for other persons and property,

(B) to obey penitentiary rules and respect the conditions governing their conditional release, if any,

(ii) their participation in programs, and

(iii) the meeting of their court-ordered obligations, including restitution to victims or child support.

(2) The plan is to be maintained in consultation with the offender in order to ensure that they receive the most effective programs at the appropriate time in their sentence to rehabilitate them and prepare them for reintegration into the community, on release, as a law-abiding citizen.

(3) In making decisions on program selection for—or the transfer or conditional release of — an inmate, the Service shall take into account the offender's progress towards meeting the objectives of their correctional plan.

15.2 The Commissioner may provide offenders with incentives to encourage them to make progress towards meeting the objectives of their correctional plans.

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CLAUSE 55

SUBJECT AND EFFECT

Clause 55 moves the requirement to develop a correctional plan from the *Corrections and Conditional Release Regulations* and places it in the *Corrections and Conditional Release Act* under a new section (15.1). The proposed Section 15.2 provides the Commissioner with the ability to provide offenders with incentives.

REASON FOR CHANGE

Creating this section clarifies and emphasizes the responsibilities of offenders in terms of their conduct within the institution as well as meeting their responsibilities in respect of judicial orders. The rehabilitation mandate of the Service is not a one-way commitment, therefore this amendment responds to the Sampson Panel's belief that if rehabilitation is to occur and truly be sustained, it must be a shared responsibility of the Service and the offender.

Section 15.2 amends the *Conditional Release Act* to allow for the establishment of incentive measures designed to promote offender participation in achieving the goals outlined in their correctional plan. This is important because it introduces the notion of meaningful incentives and consequences to encourage offenders to participate in their correctional plans so as to support the continuous involvement of the offender in the correctional plan in order to earn parole.

RELATED CLAUSES

Clauses 52 and 54

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CLAUSE 56

PRESENT SUBSECTION

16. (2) Subject to subsection (3), a person who, pursuant to an agreement entered into under paragraph (1)(*b*), is confined in a penitentiary is, notwithstanding subsection 743.3(1) of the *Criminal Code*, subject to all the statutes, regulations and rules applicable in the penitentiary in which the person is confined.

PROPOSED SECTION

56. Subsection 16(2) of the Act is replaced by the following:

(2) Subject to subsection (3), a person who is confined in a penitentiary pursuant to an agreement entered into under paragraph (1)(*b*) is, despite section 743.1 of the *Criminal Code*, subject to all the statutes, regulations and rules applicable in the penitentiary in which the person is confined.

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Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 56

SUBJECT AND EFFECT

Clause 56 would make a technical amendment to subsection 16(2) to reflect proper numbering of the reference in the *Criminal Code.*

REASON FOR CHANGE

This technical amendment changes *Criminal Code* reference from subsection 743.3(1) to section 743.1 to reflect proper numbering.

RELATED CLAUSE

None

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Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 57

PRESENT SUBSECTION

26.1 At the request of a victim of an offence committed by an offender, the commissioner

…

(b) may disclose to the victim any of the following information about the offender where in the Commissioner's opinion the interest of the victim in such disclosure clearly outweighs any invasion of the offenders' privacy that could result from the disclosure:

26. (1)(*b*)(ii) the location of the penitentiary in which the sentence is being served,

(iii)

(vi)

(iv) the destination of the offender on any temporary absence, work release, parole or statutory release, and whether the offender will be in the vicinity of the victim while travelling to that destination, and

PROPOSED SECTION

57. Subparagraph 26(1)(*b*)(ii) of the Act is replaced by the following:

(ii) the <u>name and</u> location of the penitentiary in which the sentence is being served,

(ii.1) if the offender is transferred, a summary of the reasons for the transfer and the name and location of the penitentiary in which the sentence is being served,

(ii.2) if the offender is to be transferred to a minimum security institution as designated by Commissioner's Directive and it is possible to notify the victim before the transfer, a summary of the reasons for the transfer and the name and location of the institution in which the sentence is to be served,

(ii.3) the programs that were designed to address the needs of the offender and contribute to their successful reintegration into the community in which the offender is participating or has participated,

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(ii.4) the serious disciplinary offences that the offender has committed,

(2) Subparagraph 26(1)(*b*)(vi) of the Act is replaced by the following:

(vi) the destination of the offender on any temporary absence, work release, parole or statutory release, whether the offender will be in the vicinity of the victim while travelling to that destination and the reasons for any temporary absence, and

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CLAUSE 57

SUBJECT AND EFFECT

This clause makes amendments to the Act to expand the information provided to registered victims regarding offenders.

REASON FOR CHANGE

Subsection 1 amendments are intended to provide registered victims with the reasons for the transfer of an offender for whom they have been identified as a victim under the provisions of the Act; to provide victims with advance notice of transfers to minimum security institutions, whenever possible; and, the addition of sub-paragraphs 26(1)(b)(ii.1) through 26(1)(b)(ii.4) permit the disclosure of information relating to the offender's transfer, participation in programs and convictions for serious disciplinary offences to a victim.

Subsection 2 amendments are intended to amend subparagraph 26(1)(b)(vi) in order to provide victims with the reasons for any temporary absence of the offender for whom they have been identified as a victim under the provisions of the Act, thereby responding to victims' concerns.

RELATED CLAUSES

Clauses 54 and 71

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 58

PRESENT SUBSECTION

28. Where a person is, or is to be, confined in a penitentiary, the Service shall take all reasonable steps to ensure that the penitentiary in which the person is confined is one that provides the least restrictive environment for that person, taking into account.

PROPOSED SECTION

58. The portion of section 28 of the Act is before paragraph (*a*) is replaced by the following:

28. If a person is or is to be confined in a penitentiary, the Service shall take all reasonable steps to ensure that the penitentiary in which they are confined is one that provides them with an environment that contains only the necessary restrictions, taking into account.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 58

SUBJECT AND EFFECT

This amendment introduces wording to convey a better understanding of the degree of restrictiveness that is permissible for the Service and parole boards in their decision-making.

REASON FOR CHANGE

It clarifies that where persons are to be confined in a penitentiary, it is to provide an environment that contains only the necessary restrictions. It also ensures consistency with amendments to paragraph 4(d) and 101(d).

RELATED CLAUSES

Clauses 54 and 71

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 59

PRESENT SUBSECTION

30. (1) The service shall assign a security classification of maximum, medium or minimum to each inmate in accordance with regulations made under paragraph 96(2.6).

(2) The service shall give to each inmate reasons, in writing for assigning a particular security classification or for changing that classification.

PROPOSED SECTION

59. Section 30 of the Act is amended by adding the following after subsection (2):

(3) Within the maximum and medium security classifications, the Commissioner may assign an inmate to a subclassification in accordance with the regulations made under paragraph 96(*z.6*).

(4) The Commissioner or the staff member designated by the Commissioner shall give each inmate reasons, in writing, for assigning them to a subclassification or for changing that subclassification.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 59

SUBJECT AND EFFECT

The addition of subsection 3 allows for regulations that would provide for the assignment of sub-classifications of offenders. Subsection 4 ensures that the offender is provided with reasons in writing for assigning them to a subclassification and changes in their subclassification.

REASON FOR CHANGE

Subsection 3 allows for regulations that would provide for the assignment of subclassifications to offenders such as those who are in intake, orientation and transitional units, those who actively participate or are less engaged in their correctional plan based on factors such as specified standards of behaviour or who must be separated because of gang affiliations. This responds to the reality that the penitentiary population is composed of more than maximum, medium and minimum but rather subpopulations who must be distinctly managed and to whom services must be provided.

Subsection 4 ensures that the reasons for their subclassification are provided to the inmates in writing, and any changes thereto.

RELATED CLAUSES

Clauses 54 and 69(6)

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 60

PRESENT SUBSECTION

31. (1) The purpose of administrative segregation is to keep an inmate from associating with the general inmate population.

(2) Where an inmate is in administrative segregation in a penitentiary, the Service shall endeavour to return the inmate to the general inmate population, either of that penitentiary or of another penitentiary, at the earliest appropriate time.

(3) The institutional head may order that an inmate be confined in administrative segregation if the institutional head believes on reasonable grounds

(*a*) that

(i) the inmate has acted, has attempted to act or intends to act in a manner that jeopardizes the security of the penitentiary or the safety of any person, and

(ii) the continued presence of the inmate in the general inmate population would jeopardize the security of the penitentiary or the safety of any person,

(*b*) that the continued presence of the inmate in the general inmate population would interfere with an investigation that could lead to a criminal charge or a charge under subsection 41(2) of a serious disciplinary offence, or

(*c*) that the continued presence of the inmate in the general inmate population would jeopardize the inmate's own safety, and the institutional head is satisfied that there is no reasonable alternative to administrative segregation.

PROPOSED SECTION

60. Section 31 of the Act is replaced by the following:

31. (1) The purpose of administrative segregation is to maintain the security of the penitentiary or the safety of any person by not allowing an inmate to associate with other inmates.

(2) The inmate is to be released from administrative segregation at the earliest appropriate time.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(3) The institutional head may order that an inmate be confined in administrative segregation if the institutional head is satisfied that there is no reasonable alternative to administrative segregation and he or she believes on reasonable grounds that

(*a*) the inmate has acted, has attempted to act or intends to act in a manner that jeopardizes the security of the penitentiary or the safety of any person and allowing the inmate to associate with other inmates would jeopardize the security of the penitentiary or the safety of any person;

(*b*) allowing the inmate to associate with other inmates would interfere with an investigation that could lead to a criminal charge or a charge under subsection 41(2) of a serious disciplinary offence; or

(*c*) allowing the inmate to associate with other inmates would jeopardize the inmate's safety.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 60

SUBJECT AND EFFECT

Clause 60 amends the wording of section 31 to clarify the purpose of administrative segregation is the maintenance of security in the institution and to recognize that some offenders may need to be kept apart from some inmate subpopulations. The amendments also replaces the term "general inmate population" in recognition of the diversity of offender subpopulations (e.g., gang affiliations). The wording also alters the grounds on which a warden may order administrative segregation from a “belief on reasonable grounds” that certain criteria exist, to a satisfaction that no reasonable alternative exists based on those grounds.

REASON FOR CHANGE

This amendment makes it clear that safety and security of the penitentiary is the purpose of administrative segregation and to replace “return the inmate to the general inmate population, either of that penitentiary or of another penitentiary” with “to be released from administrative segregation” recognizing the view of the Sampson Panel that the penitentiary population is composed of subpopulations that must be managed.

RELATED CLAUSES

Clauses 61 and 63(2)

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 61

PRESENT SUBSECTION

37. An inmate in administrative segregation shall be given the same rights, privileges and conditions of confinement as the general inmate population, except for those rights, privileges and conditions that

(*a*) can only be enjoyed in association with other inmates; or

(*b*) cannot reasonably be given owing to

(i) limitations specific to the administrative segregation area, or

(ii) security requirements.

PROPOSED SECTION

61. Section 37 of the Act is replaced by the following:

37. An inmate in administrative segregation has the same rights and conditions of confinement as other inmates, except for those that

(*a*) can only be enjoyed in association with other inmates; or

(*b*) cannot be enjoyed due to

(i) limitations specific to the administrative segregation area, or

(ii) security requirements.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 61

SUBJECT AND EFFECT

This amendment clarifies the limits of administrative segregation and replaces "general inmate population" with "other inmates". It also removes the notion of "privileges" that can be engaged in administrative segregation emphasizing only an inmate's rights.

REASON FOR CHANGE

Use of the term "rights" only (rather than rights and privileges) comports with proposed changes to other parts of the Act and with the Sampson Report recommendations regarding population management and incentives. Replacing the words "general inmate population" with "other inmates" ensures consistency with the view of the Sampson Panel, that there is not just one general inmate population but rather a number of different sub-populations.

RELATED CLAUSES

Clauses 54, 60 and 63(2)

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 62

PRESENT SUBSECTION

40. (*f*) is disrespectful or abusive toward a staff member in a manner that could undermine a staff member's authority;

(*g*) is disrespectful or abusive toward any person in a manner that is likely to provoke a person to be violent;

(*r*) wilfully disobeys a written rule governing the conduct of inmates; or

PROPOSED SECTION

62. (1) Paragraphs 40(*f*) and (*g*) of the Act are replaced by the following:

(*f*) is disrespectful <u>toward a person in a manner that is likely to provoke them to be violent</u> or toward a staff member in a manner that could undermine <u>their</u> authority <u>or the authority of staff members in general.</u>

(*g*) is abusive toward <u>a</u> person or <u>intimidates them by threats that violence or other injury will be done to, or punishment inflicted on, them</u>;

(2) Section 40 of the Act is amended by striking out "or" at the end of paragraph (r) and by adding the following after that paragraph:

<u>(*r.1*)</u> knowingly makes a false claim for compensation from the Crown;

<u>(*r.2*)</u> throws a bodily substance towards another person; or

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 62

SUBJECT AND EFFECT

These amendments separate disrespectful conduct from abusive conduct in paragraphs 40(f) and (g) and adds a new disciplinary offences of making false claims and throwing bodily substances in (r.1) and (r.2).

REASON FOR CHANGE

Changes to paragraph 40(f) streamline the offence by reducing the overlap, updates the language, and creates new specific offence combining all elements of "disrespectful". Changing 40(g) streamlines the offence by reducing the overlap, updates the language, and creates new specific offence combining all elements of "abusive".

Creating paragraph 40(r.1) and 40(r.2) establishes a specific offences for making a false claim for compensation from the Crown for lost or damaged property, and for the throwing a bodily substance towards another person.

RELATED CLAUSES

Clauses 54, 55, 57, 63 and 66

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 63

PRESENT SUBSECTION

44. (1)(*c*) an order to make restitution;

(*f*) in the case of a serious disciplinary offence, segregation from other inmates for a maximum of thirty days.

PROPOSED SECTION

63. (1) Paragraph 44(1)(*c*) of the Act is replaced by the following:

(*c*) an order to make restitution, including in respect of any property that is damaged or destroyed as a result of the offence;

(2) Paragraph 44(1)(*f*) of the Act is replaced by the following:

(*f*) in the case of a serious disciplinary offence, segregation from other inmates — with or without restrictions on visits with family, friends and other persons from outside the penitentiary — for a maximum of 30 days.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 63

SUBJECT AND EFFECT

Amendments specify restitution for property that is damaged or destroyed. Provides that inmates convicted of serious disciplinary offences and placed in segregation from other inmates may be subject to restrictions on visits.

REASON FOR CHANGE

Change to 44(1)(*c*) allows for an offender who damages government property to be ordered to provide restitution in the amount of the damage (e.g. deliberate flooding of a cell, fire damage, etc.). Change to 44(1)(*f*) emphasizes that disciplinary segregation carries with it certain consequences beyond just the fact of non-association with other inmates.

RELATED CLAUSES

Clauses 54, 55, 60 and 62

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 64

PRESENT SUBSECTION

Not applicable

PROPOSED SECTION

64. The Act is amended by adding the following after section 57:

57.1 (1) The Service may demand that an offender wear a monitoring device in order to monitor their compliance with a condition of a temporary absence, work release, parole, statutory release or long-term supervision that restricts their access to a person or a geographical area or requires them to be in a geographical area.

(2) An offender who is required to wear a monitoring device is to be given reasonable opportunities to make representations to the prescribed official in relation to the duration of the requirement.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 64

SUBJECT AND EFFECT

Adding this clause provides for electronic monitoring of offenders on release where it is deemed necessary and reasonable and allows offenders to make representations related to the duration of the requirement.

REASON FOR CHANGE

Subsection 1 provides the authority for Correctional Service of Canada to instruct that an offender wear a monitoring device when it is reasonable and necessary in order to monitor their compliance with a condition of release. Subsection 2 allows the offender to make representations in relation to the duration of the requirement to wear a monitoring device when it is reasonable and necessary in order to monitor their compliance with a condition of conditional release.

RELATED CLAUSES

Clauses 54, 55 and 69(2)

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 65

PRESENT SUBSECTION

Not applicable

PROPOSED SECTION

65. Section 61 of the Act is amended by adding the following after subsection (3):

(4) An institutional head may, in writing, authorize a staff member to search the vehicles at a penitentiary if the institutional head has reasonable grounds to believe that

(*a*) there is a clear and substantial danger to the security of the penitentiary or the life or safety of persons because evidence exists that there is contraband at the penitentiary or that a criminal offence is being planned or has been committed at the penitentiary; and

(*b*) it is necessary to search the vehicles in order to locate and seize the contraband or other evidence and to avert the danger.

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CLAUSE 65

SUBJECT AND EFFECT

This amendment adds a subsection to specify the authority and the circumstances for exceptional searches of vehicles at a penitentiary.

REASON FOR CHANGE

This change adds specificity to searches with respect to exceptional searches of vehicles on penitentiary grounds on the authority of the institutional head when there is evidence that there is contraband in the penitentiary or that a criminal offence has been committed or is planned at the penitentiary. It specifies that this must be in writing; and that the threshold is reasonable grounds to believe that there is clear and substantial danger to the security of the penitentiary or life or safety of persons and the search is necessary to locate and seize the contraband or other evidence and to avert danger. The subsection mirrors what is currently in the regulation with a more specific definition of what constitutes an emergency.

RELATED CLAUSE

Clause 54

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 66

PRESENT SUBSECTION

84. Where an inmate who is applying for parole has expressed an interest in being released to an aboriginal community, the Service shall, if the inmate consents, give the aboriginal community

(*a*) adequate notice of the inmate's parole application; and

(*b*) an opportunity to propose a plan for the inmate's release to, and integration into, the aboriginal community.

PROPOSED SECTION

66. Section 84 of the Act is replaced by the following:

84. If an inmate expresses an interest in being released into an aboriginal community, the Service shall, with the inmate's consent, give the aboriginal community

(*a*) adequate notice of the inmate's parole review or their statutory release date, as the case may be; and

(*b*) an opportunity to propose a plan for the inmate's release and integration into that community.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 66

SUBJECT AND EFFECT

This clause would expand the types of conditional releases under which an offender may be considered for release to an aboriginal community by including Statutory Release.

REASON FOR CHANGE

This amendment would authorize the Service, with the consent of the inmate, to give to the aboriginal community notice of the Statutory Release date and to work with an aboriginal community to plan for the inmate's Statutory Release and integration into that community. This expands provisions from parole only to include Statutory Release.

RELATED CLAUSES

Clauses 54, 55 and 57

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 67

PRESENT SUBSECTION

93. (2) Le directeur peut libérer un détenu dans les cinq jours qui précèdent la date prévue au paragraphe (1) s'il est convaincu que cette mesure facilitera sa réinsertion sociale.

PROPOSED SECTION

67. Subsection 93(2) of the French version of the Act is replaced by the following:

(2) Le directeur peut libérer un détenu dans les cinq jours qui précèdent celui normalement prévu pour sa libération s'il est convaincu que cette mesure facilitera sa réinsertion sociale.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 67

SUBJECT AND EFFECT

This change ensures consistency in interpretation between the French and the English versions of the subsection.

REASON FOR CHANGE

Currently, the French and English versions of section 93(2), which permits the early release of an inmate prior to a statutory release or warrant expiry date if the institutional head is satisfied that it will facilitate the inmate's re-entry into the community, could be interpreted differently. In the English, the maximum early release is five days before the statutory release date or the warrant expiry date and, in the French, it is five days before the day preceding the statutory release date or the warrant expiry date. An amendment is required in the French version to make it clear that the release date may be authorized five days prior to the statutory release date or the warrant expiry date.

RELATED CLAUSE

None

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CLAUSE 68

PRESENT SUBSECTION

94. (1) At the request of a person who has been released from penitentiary on parole or statutory release, or who is entitled to be released from penitentiary on statutory release, the institutional head may allow the person to stay temporarily in the penitentiary in order to assist that person's rehabilitation, but such a temporary stay may not extend beyond the expiration of the person's sentence.

PROPOSED SECTION

68. Subsection 94(1) of the Act is replaced by the following:

94. (1) At the request of a person who has been released from penitentiary on parole or statutory release, or who is entitled to be released from a penitentiary on statutory release, the institutional head may allow them to stay temporarily in the penitentiary in order to assist their rehabilitation, but the temporary stay may not extend beyond the expiration of their sentence.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 68

SUBJECT AND EFFECT

This change amends subsection 94(1) to authorize the institutional head to allow inmates entitled to be released on parole to stay temporarily in a penitentiary.

REASON FOR CHANGE

These changes extend the institutional head's authority to allow inmates to stay temporarily in a penitentiary by including inmates entitled to be released on parole; the stay must be seen to aid in their rehabilitation and cannot extend beyond warrant expiry date.

RELATED CLAUSE

None

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CLAUSE 69

PRESENT SUBSECTION

96. The Governor in Council may make regulations

(c) respecting, for the purposes of section 22,

(p) prescribing limits on the entry into a penitentiary, and the use by inmates, of publications, video and audio materials, films and computer programs;

(s) respecting penitentiary industry;

(*z.6*) respecting the assignment to inmates of security classifications pursuant to section 30, which regulations must set out factors to be considered in determining the security classification of an inmate;

(*z.7*) providing for the monitoring or intercepting of communications of any kind between an inmate and another inmate or other person, where reasonable for protecting the security of the penitentiary or the safety of persons;

(*z.8*) respecting escorted temporary absences and work releases;

PROPOSED SECTION

69. (1) Subparagraph 96(*c*)(i) of the French version of the Act is replaced by the following:

(i) les circonstances où une indemnité peut être versée,

(2) Section 96 of the Act is amended by adding the following after paragraph (*m*):

(*m.1*) authorizing the Commissioner to, by Commissioner's Directive, make rules regarding the consequences of tampering with or refusing to wear a monitoring device referred to in section 57.1;

(3) Paragraph 96(*p*) of the Act is replaced by the following:

(*p*) authorizing the institutional head — or a staff member designated by him or her — to, in the prescribed circumstances, restrict or prohibit the entry into and removal from a penitentiary and the use by inmates of publications, video and audio materials, films and computer programs;

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(4) Paragraph 96(*s*) of the Act is replaced by the following:

(*s*) respecting penitentiary industry, including regulations authorizing the Minister to establish advisory boards and appoint members to them and regulations providing for the remuneration of those members at rates determined by the Treasury Board and for the reimbursement of any travel and living expenses that are consistent with directives of the Treasury Board and are incurred by those members in performing their duties while away from their ordinary place of residence;

(5) Paragraph 96(*y*) of the Act is replaced by the following:

(*y*) respecting the procedure to be followed on the death of an inmate, including the circumstances in which the Service may pay transportation, funeral, cremation or burial expenses for a deceased inmate;

(6) Paragraphs 96(*z.6*) to (*z.8*) of the Act are replaced by the following:

(*z.6*) respecting the assignment to inmates of security classifications and subclassifications under section 30 and setting out the factors to be considered in determining the security classification and subclassification;

(*z.7*) authorizing the institutional head — or a staff member designated by him or her — to, in the prescribed circumstances, monitor, intercept or prevent communications between an inmate and another person;

(*z.8*) respecting escorted temporary absences — including the circumstances in which the releasing authority may authorize an absence under section 17 — and work releases;

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CLAUSE 69

SUBJECT AND EFFECT

Amends the French version of subparagraphs 96(c)(i) to align it with the English version.

Adds subparagraph 96(m.1) to authorize the Commissioner to cancel or suspend an offender's conditional release for tampering with or refusing to wear monitoring device.

Amends paragraph 96(p) to expand the regulation-making authority to include the authority to prohibit and restrict the removal of materials such as publications, videos and films from the penitentiary and to specify that this authority lies with the institutional head or a designated staff.

Amends paragraph 96(s) by adding to the regulation-making authority on prison industries authority to appoint members to the CORCAN Advisory Board, to remunerate them and reimburse their travel and living expenses.

Amends paragraph 96(y) by adding to the regulation-making authority circumstances in which the Service may provide related funeral expenses.

Paragraph 96(z.6) would be amended to add a reference to the new subclassifications of offenders created in clause 59.

Paragraph 96(z.7) would be amended to add the authority to make regulations to prevent communications between an inmate and a person, at the request of the person and to specify that the institutional head or designated staff may be authorized under regulation to monitor, intercept or prevent communications.

Paragraph 96(z.8) would be amended to add the authority to make regulations setting out the circumstances in which the institutional head may authorize escorted temporary absences.

REASON FOR CHANGE

Subclause 69(1) aligns the French and English versions by amending the French version's regulation-making authority relating to compensation payment for death or disability of an inmate to state that compensation may be paid (rather than is paid).

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Subclause 69(2) provides Correctional Service of Canada with the authority to cancel or suspend the work release, temporary absence or other form of release it has granted and a condition of which requires wearing a monitoring device if the device is tampered with or the offender refuses to wear the monitoring device.

Subclause 69(3) adds to the regulation-making authority to include prescribing limits on removal from penitentiary of materials, specifically publications, video and audio materials, films and computer programs, to the current authority to prescribe limits on entry into the penitentiary and use by inmates thereby enhancing institutional security. This also adds that the authority to restrict or prohibit lies with the institutional head or designated staff.

Subclause 69(4) adds to the regulation-making authority on prison industries authority to appoint members to the CORCAN Advisory Board and for the remuneration and reimbursement of travel and living expenses of Advisory Board members.

Subclause 69(5) adds to the regulation-making authority for procedures on the death of an inmate, authority to include the circumstances in which the Service may provide transportation, funeral, cremation or burial expenses for a deceased inmate.

Paragraph 96(z.6) adds reference to the newly created subclassifications for greater consistency.

Paragraph 96(z.7) adds the authority to make regulations to prevent communications between an inmate and a person, at the person's request. It also adds that the authority to prevent communications lies with the institutional head or a designated staff.

Paragraph 96(z.8) adds the authority to make regulations setting out the circumstances in which an institutional head may grant an escorted temporary absence.

RELATED CLAUSES

Clauses 52, 59 and 64

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 70

PRESENT SUBSECTION

99. (1) In this Part,

"day parole" means the authority granted to an offender by the Board or a provincial parole board to be at large during the offender's sentence in order to prepare the offender for full parole or statutory release, the conditions of which require the offender to return to a penitentiary, a community-based residential facility or a provincial correctional facility each night, unless otherwise authorized in writing;

"working day" means a day on which offices in the federal public administration are generally open in the province in question.

PROPOSED SECTION

70. (1) The definition "day parole" and "working day" in subsection 99(1) of the Act are replaced by the following:

"day parole" means the authority granted to an offender by the Board or a provincial parole board to be at large during the offender's sentence in order to prepare the offender for full parole or statutory release, the conditions of which require the offender to return to a penitentiary, community-based residential facility, provincial correctional facility or other location each night or at another;

"working day" has the same meaning as in Part I.

(2) Subsection 99(1) of the Act is amended by adding the following in alphabetical order:

"parole supervisor" means a staff member as defined in subsection 2(1) or a person entrusted by the Service with the guidance and supervision of an offender;

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 70

SUBJECT AND EFFECT

Subclause 70(1) amends the definition of "day parole" and adds a definition of "working day" to Part II.

Subclause 70(2) adds a definition of parole supervisor in section 99 of the Act.

REASON FOR CHANGE

Subclause 70(1) deletes the inappropriate reference to the National Parole Board authority currently contained in the subsection ("unless otherwise authorized in writing") and substitutes more appropriate definitional language ("or other location each night or at another specified interval"). This clause also adds "working day" to the definitions section (section 99) of Part II of the Act by referencing the definition as in Part I: "working day means a day on which offices of the federal public administration are generally open in the province in question".

Subclause 70(2) amends section 99 so that "parole supervisor" means (*a*) a staff member as defined in subsection 2(1); or (*b*) a person entrusted by the Service with the guidance and supervision of an offender as referred to in section 134.2.

RELATED CLAUSE

Clause 52

CLAUSE 147

PRESENT SECTION

753.2 (3) An offender who is required to be supervised, a member of the National Parole Board, or, on approval of that Board, the parole supervisor, as that expression is defined in subsection 134.2(2) of the *Corrections and Conditional Release Act*, of the offender, may apply to a superior court of criminal jurisdiction for an order reducing the period of long-term supervision or terminating it on the ground that the offender no longer presents a substantial risk of reoffending and thereby being a danger to the community. The onus of proving that ground is on the applicant.

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Divulgé(s) en vertu de la Loi sur l'accès à l'information.

PROPOSED SECTION

147. Subsection 753.2(3) of the Act is replaced by the following:

(3) An offender who is required to be supervised, a member of the National Parole Board or, on approval of that Board, the offender's parole supervisor, as defined in subsection 99(1) of the *Corrections and Conditional Release Act*, may apply to a superior court of criminal jurisdiction for an order reducing the period of long-term supervision or terminating it on the ground that the offender no longer presents a substantial risk of reoffending and thereby being a danger to the community. The onus of proving that ground is on the applicant.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 71

PRESENT SUBSECTION

101. The principles that shall guide the Board and the provincial parole boards in achieving the purpose of conditional release are

(*a*) that the protection of society be the paramount consideration in the determination of any case;

(*b*) that parole boards take into consideration all available information that is relevant to a case, including the stated reasons and recommendations of the sentencing judge, any other information from the trial or the sentencing hearing, information and assessments provided by correctional authorities, and information obtained from victims and the offender;

(*c*) that parole boards enhance their effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system and through communication of their policies and programs to offenders, victims and the general public;

(*d*) that parole boards make the least restrictive determination consistent with the protection of society;

(*e*) that parole boards adopt and be guided by appropriate policies and that their members be provided with the training necessary to implement those policies; and

(*f*) that offenders be provided with relevant information, reasons for decisions and access to the review of decisions in order to ensure a fair and understandable conditional release process.

PROPOSED SECTION

71. Section 101 of the Act is replaced by the following:

100.1 The protection of society is the paramount consideration for the Board and the provincial parole boards in the determination of all cases.

101. The principles that guide the Board and the provincial parole boards in achieving the purpose of conditional release are <u>as follows</u>:

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(*a*) parole boards take into consideration all relevant available information, including the stated reasons and recommendations of the sentencing judge, the nature and gravity of the offence, the degree of responsibility of the offender, information from the trial or sentencing process and information obtained from victims, offenders and other components of the criminal justice system, including assessments provided by correctional authorities;

(*b*) parole boards enhance their effectiveness and openness through the timely exchange of relevant information with victims, offenders and other components of the criminal justice system and through communication about their policies and programs to victims, offenders and the general public;

(*c*) parole boards make decisions that are consistent with the protection of society and that are limited to only what is necessary and proportionate to the purpose of conditional release;

(*d*) parole boards adopt and are guided by appropriate policies and their members are provided with the training necessary to implement those policies; and

(*e*) offenders are provided with relevant information, reasons for decisions and access to the review of decisions in order to ensure a fair and understandable conditional release process.

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CLAUSE 71

SUBJECT AND EFFECT

Section 101 of the *Corrections and Conditional Release Act* is replaced to emphasize a number of factors with respect to conditional release decision-making and related information sharing.

REASON FOR CHANGE

Section 100.1 separates the protection of society from the principles that guide parole boards, clarifying that the protection of society is the paramount consideration for the parole boards in the conditional release decision making process and mirrors (section 3.1).

Paragraph 101(a) of the Act to provide that parole boards take into consideration all available information that is relevant to a case, including the stated reasons and recommendations of the sentencing judge, information about the nature and gravity of the offence and the degree of responsibility of the offender, any other information from the trial or the sentencing hearing, information and assessments provided by correctional authorities, information obtained from victims, the offender and other components of the criminal justice system. The amendment is consistent with paragraph 4(b) of the *Corrections and Conditional Release Act* and Recommendation 2(b) of the Sampson Report.

Paragraph 101 (b) enhances the openness of the parole boards through the timely information sharing with victims and offenders.

Paragraph 101(c) introduces wording to convey a better understanding of the degree of restrictiveness that is permissible for parole boards in their conditional release decision-making that is consistent with the protection of the public and that are necessary and proportionate to support the purpose of conditional release. This ensures consistency of language with *Corrections and Conditional Release Act* Section 4 principles that guide the Service.

Paragraphs 101(d) and (e) change "be" to "are".

RELATED CLAUSES

Clauses 52, 54, 57, 58, 79, 84, 96(2), 97 and 98

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CLAUSE 72

PRESENT SUBSECTION

COMMISSION NATIONALE DES LIBÉRATIONS CONDITIONNELLES

PROPOSED SECTION

72. The heading before section 103 of the French version of the Act is replaced by the following:

COMMISSION DES LIBÉRATIONS CONDITIONNELLES DU CANADA

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CLAUSE 72

SUBJECT AND EFFECT

Clause 72 uses current version of the title of the National Parole Board.

REASON FOR CHANGE

Clause 72 changes the French name of the National Parole Board to maintain consistency with respect to coming into force timing.

RELATED CLAUSE

Clause 73

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CLAUSE 73

PRESENT SUBSECTION

103. The National Parole Board is hereby continued, to consist of not more than forty-five full-time members and a number of part-time members appointed by the Governor in Council, on the recommendation of the Minister, to hold office during good behaviour for periods not exceeding ten years and three years, respectively.

PROPOSED SECTION

73. Section 103 of the Act is replaced by the following:

103. The National Parole Board is continued as the Parole Board of Canada and consists of not more than 60 full-time members and a number of part-time members all of whom are appointed by the Governor in Council, on the recommendation of the Minister, to hold office during good behaviour for periods not exceeding 10 years and 3 years, respectively.

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CLAUSE 73

SUBJECT AND EFFECT

This Clause changes the name of the National Parole Board to the Parole Board of Canada and amends section 103 to allow for an increase in the maximum number of full-time members to be appointed to the National Parole Board.

REASON FOR CHANGE

It changes the name of the National Parole Board to the Parole Board of Canada which is also its current applied title, and permits the maximum number of full-time members to be appointed to the Board to increase from 45 to 60.

RELATED CLAUSE

Clause 72

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CLAUSE 74

PRESENT SUBSECTION

115. (1)(*c*) in any other case,

(i) one half of the period required to be served by the offender to reach the offender's full parole eligibility date, or

(ii) six months,

whichever is greater.

PROPOSED SECTION

74. Paragraph 115(1)(*c*) of the Act is replaced by the following:

(*c*) in any other case, the longer of

(i) six months, and

(ii) one half of the period required to be served by the offender to reach their full parole eligibility date.

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CLAUSE 74

SUBJECT AND EFFECT

This clause amends paragraph 115(1)(c) to clarify eligibility for an unescorted temporary absence for those serving a determinate sentence.

REASON FOR CHANGE

This change clarifies in French (based on the English version which is clearer) that an offender's eligibility for an unescorted absence is the longer of six months or one-half of the period that remains for full parole eligibility.

RELATED CLAUSE

Clause 52

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CLAUSE 75

PRESENT SECTION

119.1 [Repealed, 2011, c. 11, s. 3]

PROPOSED SECTION

75. The Act is amended by adding the following after section 119:

119.1 For the purpose of sections 120 to 120.3, and unless the context requires otherwise, a sentence is one that is not constituted under subsection 139(1).

119.2 For the purposes of sections 120 to 120.3, the eligibility for parole of a young person in respect of whom a youth sentence is imposed under paragraph 42(2)(*n*), (*o*), (*q*) or (*r*) of the *Youth Criminal Justice Act* and who is transferred to an provincial correctional facility for adults or a penitentiary under section 89, 92, or 93, of the Act shall be determined on the basis of the total of the custody and supervision periods of the youth sentence.

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CLAUSE 75

SUBJECT AND EFFECT

This clause clarifies the definition of an overall sentence, where the offender is subject to more than one.

REASON FOR CHANGE

This change clarifies the definition of sentence for the purposes of interpreting sections 120 to 120.3 (parole eligibility date rules for those serving more than one sentence). For these purposes, a sentence is not one that has been merged in accordance with subsection 139(1) of the Act.

119.2 is a new section that clarifies in the *Corrections and Conditional Release Act* that parole eligibility for a young person serving a youth sentence in a penitentiary or provincial facility for adults is based on the custodial and supervision portions of the sentence, consistent with case law.

RELATED CLAUSES

Clauses 76 and 77

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CLAUSE 76

PRESENT SUBSECTION

120.1(1) Where an offender who is serving a sentence receives an additional sentence that is to be served consecutively to the sentence the offender was serving when the additional sentence was imposed, the offender is not eligible for full parole until the day on which the offender has served, commencing on the day on which the additional sentence was imposed,

(*a*) any remaining period of ineligibility in relation to the sentence the offender was serving when the additional sentence was imposed; and

(*b*) the period of ineligibility in relation to the additional sentence.

(2) Notwithstanding subsection (1), where an offender receives an additional sentence that is to be served consecutively to a portion of the sentence the offender was serving when the additional sentence was imposed, the offender is not eligible for full parole until the day that is the latest of

(*a*) the day on which the offender has served the period of ineligibility for full parole in relation to the sentence the offender was serving when the additional sentence was imposed,

(*b*) the day on which the offender has served, commencing on the date on which the additional sentence was imposed, the period of ineligibility for full parole in relation to the additional sentence, and

(*c*) the day on which the offender has served the period of ineligibility for full parole in relation to the sentence that includes the additional sentence as provided by subsection 139(1).

120.2 (1) Subject to subsection (2), where an offender who is serving a sentence receives an additional sentence that is to be served concurrently with any portion of the sentence the offender was serving when the additional sentence was imposed, the offender is not eligible for full parole until the day that is the later of

(*a*) the day on which the offender has served the period of ineligibility in relation to the sentence the offender was serving when the additional sentence was imposed, and

(*b*) the day on which the offender has served

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(i) the period of ineligibility in relation to any portion of the sentence that includes the additional sentence as provided by subsection 139(1) and that is subject to an order under section 743.6 of the *Criminal Code* or section 140.4 of the *National Defence Act*, and

(ii) the period of ineligibility in relation to any other portion of that sentence.

(2) Where an offender who is sentenced to life imprisonment or for an indeterminate period receives an additional sentence for a determinate period, the offender is not eligible for full parole until the day on which the offender has served, commencing on the day on which the additional sentence was imposed,

(*a*) any remaining period of ineligibility to which the offender is subject; and

(*b*) the period of ineligibility in relation to the additional sentence.

(3) Where, pursuant to section 745.6 of the *Criminal Code*, subsection 140.3(2) of the *National Defence Act* or subsection 15(2) of the *Crimes Against Humanity and War Crimes Act*, there has been a reduction in the number of years of imprisonment without eligibility for parole of an offender referred to in subsection (2), the offender is not eligible for full parole until the day on which the offender has served, commencing on the day on which the additional sentence was imposed,

(*a*) the remaining period of ineligibility to which the offender would have been subject, after taking into account the reduction; and

(*b*) the period of ineligibility in relation to the additional sentence.

120.3 Subject to section 745 of the *Criminal Code*, subsection 140.3(1) of the *National Defence Act* and subsection 15(1) of the *Crimes Against Humanity and War Crimes Act*, where an offender who is serving a sentence receives an additional sentence, the day on which the offender is eligible for full parole shall not be later than the day on which the offender has served fifteen years from the day on which the last of the sentences was imposed.

PROPOSED SECTION

76. Sections 120.1 to 120.3 of the Act are replaced by the following:

120.1 (1) A person who is not serving a sentence and who receives more than one sentence on the same day is not eligible for full parole until the day on which they have served a period equal to the total of

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(*a*) the period of ineligibility in respect of any portion of the sentence constituted under subsection 139(1) that is subject to an order under section 743.6 of the *Criminal Code* or section 140.4 of the *National Defence Act*, and

(*b*) the period of ineligibility in respect of any other portion of that sentence.

(2) If an offender who is serving a sentence, or is serving a sentence that was constituted under subsection 139(1), receives an additional sentence that is to be served consecutively to the sentence they are serving when the additional sentence is imposed — or receives, on the same day, two or more additional sentences to be served consecutively and the additional sentences are to be served consecutively to the sentence they are serving when the additional sentences are imposed — the offender is not eligible for full parole until the day on which they have served, from the day on which the additional sentence is or sentences are imposed, the total of the following periods:

(*a*) any remaining period of ineligibility in respect of the sentence they are serving when the additional sentence is or sentences are imposed, and

(*b*) the period of ineligibility in respect of the additional sentence or, in the case of two or more additional sentences, a period equal to the total of the periods of ineligibility in respect of all of the additional sentences.

(3) Despite subsection (2), if an offender who is serving a sentence that was constituted under subsection 139(1) receives an additional sentence that is to be served consecutively to a portion of the sentence they are serving when the additional sentence is imposed — or receives, on the same day, two or more additional sentences including a sentence to be served concurrently with the sentence being served and one or more sentences to be served consecutively to the additional current sentence – they are not eligible for full parole until the day on which they have served, from the day on which the additional sentence is or sentences are imposed, any remaining period of ineligibility to which they are subject and the longer of the following periods:

(a) one third of the period that equals the difference between the length of the sentence that was constituted under subsection 139(1), including the additional sentence or sentences, and the length of the sentence that they are serving when the additional sentence is or sentences are imposed; or

(b) the period of ineligibility of the additional sentence that is or sentences that are ordered to be served consecutively.

120.2 (1) Subject to subsection (2), if an offender who is serving a sentence, or is serving a sentence that was constituted under subsection 139(1), receives an additional sentence that is to be served concurrently with the sentence they

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are serving when the additional sentence is imposed, they are not eligible for full parole until the day that is the later of

(*a*) the day on which they have served the period of ineligibility in respect of the sentence they are serving when the additional sentence is imposed, and

(*b*) the day on which they have served

(i) the period of ineligibility in respect of any portion, of the sentence that includes the additional sentence as provided by subsection 139(1), that is subject to an order under section 743.6 of the *Criminal Code* or section 140.4 of the *National Defence Act*, and

(ii) the period of ineligibility in respect of any other portion of that sentence.

(2) If an offender who is serving a life sentence or a sentence for an indeterminate period receives a sentence for a determinate period — or receives, on the same day, two or more sentences for a determinate period — they are not eligible for full parole until the day on which they have served, from the day on which the additional sentence is or sentences are imposed, the total of the following periods:

(*a*) any remaining period of ineligibility to which they are subject, and

(*b*) the period of ineligibility in respect of the additional sentence or, in the case of two or more additional sentences, the period of ineligibility — determined in accordance with subsection (1) or section 120.1, as the case may be — in respect of the additional sentences.

(3) Where, pursuant to section 745.6 of the *Criminal Code*, subsection 140.3(2) of the *National Defence Act* or subsection 15(2) of the *Crimes Against Humanity and War Crimes Act*, there has been a reduction in the number of years of imprisonment without eligibility for parole of an offender referred to in subsection (2), the offender is not eligible for full parole until the day on which the offender has served, commencing on the day on which the additional sentence was imposed,

(*a*) the remaining period of ineligibility to which the offender would have been subject, after taking into account the reduction; and

(*b*) the period of ineligibility in relation to the additional sentence, or, in the case of two or more additional sentences, the period of ineligibility – determined in accordance with subsection (1) or section 120.1, as the case may be – in respect of the additional sentences.

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120.3 Subject to section 745 of the *Criminal Code*, subsection 140.3(1) of the *National Defence Act* and subsection 15(1) of the *Crimes Against Humanity and War Crimes Act*, the day on which an offender is eligible for full parole shall not be later than

(*a*) in the case of a person who is not serving a sentence and receives more than one sentence on the same day, the day on which they have served 15 years from the day on which the sentences are imposed;

(*b*) in the case of an offender who is serving a sentence — or is serving a sentence that was constituted under subsection 139(1) — and who receives an additional sentence that changes the day on which they are eligible for parole, the day on which they have served 15 years from the day on which the additional sentence is imposed; and

(*c*) in the case of an offender who is serving a sentence — or is serving a sentence that was constituted under subsection 139(1) — and who receives, on the same day, two or more additional sentences that change the day on which they are eligible for parole, the day on which they have served 15 years from the day on which the additional sentences are imposed.

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CLAUSE 76

SUBJECT AND EFFECT

This clause amends sections 120.1 to 120.3 to clarify the rules for parole eligibility with respect to offenders who receive additional sentences while they are already serving a sentence and in respect to offenders who receive multiple sentences.

REASON FOR CHANGE

Sections 120.1 to 120.3 clarify rules with respect full parole eligibility in the following circumstances:

- Multiple sentences imposed on the same day;
- One or more additional consecutive sentences;
- Additional sentence to be served consecutively to a portion of a sentence;
- Additional concurrent sentences;
- One or more additional sentences imposed in addition to a life sentence;
- One or more additional sentences imposed where there has been reduction in parole eligibility as a result of the judicial review under s.745.6 of the *Criminal Code*, subsection 140.3(2) of the *National Defence Act* or subsection 15(2) of the *Crimes Against Humanity and War Crimes Act*; and
- Maximum period of ineligibility.

RELATED CLAUSES

Clauses 75 and 77

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CLAUSE 77

PRESENT SUBSECTION

121. (1) Subject to section 102 and notwithstanding sections 119 to 120.3 or any order made under section 743.6 of the *Criminal Code* or section 140.4 of the *National Defence Act*, parole may be granted at any time to an offender

(2) Subsection (1) does not apply to an offender who is

PROPOSED SECTION

77. (1) The portion of subsection 121(1) of the Act before paragraph (*a*) is replaced by the following:

121. (1) Subject to section 102 — and despite sections 119 to 120.3 of this Act, sections 746.1 and 761 of the *Criminal Code*, subsection 140.3(2) of the *National Defence Act* and subsection 15(2) of the *Crimes Against Humanity and War Crimes Act* and any order made under section 743.6 of the *Criminal Code* or section 140.4 of the *National Defence Act* — parole may be granted at any time to an offender

(2) The portion of subsection 121(2) of the Act before paragraph (*a*) is replaced by the following:

(2) Paragraphs (1)(*b*) to (*d*) do not apply to an offender who is

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CLAUSE 77

SUBJECT AND EFFECT

Subsection 1 amends subsection 121(1) to authorize the granting of parole at any time to terminally ill offenders serving life or an indeterminate sentence who are otherwise ineligible for parole.

Subsection 2 amends subsection 121(2) of the Act to exclude offenders serving life as a minimum or an indeterminate sentence described in paragraphs 121(1)(b) to (d) from the application of subsection 121(1). Those described in 121(1)(a) (the terminally ill) are not part of the exclusion and can be granted parole at any time.

REASON FOR CHANGE

This Clause would provide for the granting of parole 'by exception" to terminally ill offenders who are serving life as a minimum or an indeterminate sentence and are otherwise not yet at their eligibility date for parole, as well as remove reference to paragraph 121(1)(a); the effect of which, along with amendments to subsection 121(1), authorizes the Board to grant parole at any time to terminally ill offenders serving life as a minimum or an indeterminate sentence who are otherwise ineligible for parole.

RELATED CLAUSES

Clauses 75 and 76

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CLAUSE 78

PRESENT SUBSECTION

122. (4) Where the Board decides not to grant day parole, no further application for day parole may be made until six months after the decision or until such earlier time as the regulations prescribe or the Board determines.

(6) An offender may withdraw an application for day parole at any time before the commencement of the review under this section.

PROPOSED SECTION

78. (1) Subsection 122(4) of the Act is replaced by the following:

(4) No application for day parole may be made until one year after the date of the Board's decision — or until any earlier time that the regulations prescribe or the Board determines — if, following a review, the Board does not grant day parole or cancels or terminates parole.

(2) Subsection 122(6) or the Act is replaced by the following:

(6) An offender may not withdraw an application for day parole within 14 days before the commencement of the review unless the withdrawal is necessary and it was not possible to withdraw it earlier due to circumstances beyond their control.

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CLAUSE 78

SUBJECT AND EFFECT

This clause amends subsection 122(4) and (6).

REASON FOR CHANGE

Subsection 1 sets out a clear timeframe after which an offender whose parole application has been denied may re-apply for parole, (i.e., one year) and responds to recent case law (*Dixon v Canada (Attorney General), [2009] 2 FCR 397*).

Subsection 2 prevents an offender from withdrawing his parole application 14 days or less before his hearing date for circumstances that were within their control and prevents victims travelling unnecessarily.

RELATED CLAUSES

Clauses 70 and 71

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CLAUSE 79

PRESENT SUBSECTION

123. (1) Subject to subsection (2), the Board shall, at the time prescribed by the regulations, review, for the purpose of full parole, the case of every offender who is serving a sentence of two years or more and who is not within the jurisdiction of a provincial parole board.

(2) The Board is not required under subsection (1) or (5) to review the case of an offender who has advised the Board in writing that the offender does not wish to be considered for full parole and who has not in writing revoked that advice.

(3) The Board shall, on application within the period prescribed by the regulations, review, for the purpose of full parole, the case of every offender who is serving a sentence of less than two years in a penitentiary or provincial correctional facility in a province where no provincial parole board has been established.

(3.1) The Board is not required to review the case of an offender who applies for full parole if the offender is serving a sentence of less than six months.

(4) With respect to a review commenced under this section, the Board shall decide whether to grant full parole, or may grant day parole, or may adjourn the review for a reason authorized by the regulations and for a reasonable period not exceeding the maximum period prescribed by the regulations.

(5) Where the Board decides not to grant parole following a review pursuant to section 122 or subsection (1) or a review is not made by virtue of subsection (2), the Board shall conduct another review within two years after the later of

(*a*) the date on which the first review under this section took place or was scheduled to take place, and

(*b*) the date on which the first review under section 122 took place, and thereafter within two years after the date on which each preceding review under this section or section 122 took place or was scheduled to take place, until

(*c*) the offender is released on full parole or on statutory release;

(*d*) the sentence of the offender expires; or

(*e*) less than four months remains to be served before the offender's statutory release date.

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(6) Where the Board decides not to grant full parole following a review pursuant to this section, no further application for full parole may be made until six months after the decision or until such earlier time as the regulations prescribe or the Board determines.

(7) An offender may withdraw an application for full parole at any time before the commencement of the review under this section.

PROPOSED SECTION

79. (1) Subsection 123(1) and (2) of the Act are replaced by the following:

123. (1) The Board shall, within the period prescribed by the regulations and for the purpose of deciding whether to grant full parole, review the case of every offender who is serving a sentence of two years or more and who is not within the jurisdiction of a provincial parole board.

(2) The Board is not required under subsection (1), (5) or (5.1) to review the case of an offender who has advised the Board in writing that they do not wish to be considered for full parole and who has not in writing revoked that advice.

(2) Subsection 123(5) to (7) of the Act are replaced by the following:

(5) If the Board decides not to grant parole following a review under subsection (1) or section 122 or if a review is not made by virtue of subsection (2), the Board shall conduct another review within two years after the later of the day on which the review took place or was scheduled to take place and thereafter within two years after that day until

(*a*) the offender is released on full parole or on statutory release;

(*b*) the offender's sentence expires; or

(*c*) less than four months remain to be serve before the offender's statutory release date.

(5.1) If the Board cancels or terminates parole, it shall conduct another review within two years after the cancellation or termination and, after that date, within two years after the day on which each preceding review takes place until

(*a*) the offender is released on full parole or statutory release;

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(*b*) the offender's sentence expires; or

(*c*) less than four months remain to be served before the offender's statutory release date.

(6) No application for full parole may be made until one year after the date of the Board's decision — or until any earlier time that the regulations prescribe or the Board determines — if, following a review, the Board does not grant full parole or cancels or terminates parole.

(7) An offender may not withdraw an application for full parole within 14 days before the commencement of the review unless the withdrawal is necessary and it was not possible to withdraw it earlier due to circumstances beyond their control.

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CLAUSE 79

SUBJECT AND EFFECT

This Clause clarifies language in subsection 123(1) and adds to subsection 123(2) a reference to a new subsection 123(5.1). This clause also amends subsections 123(5) to (7).

REASON FOR CHANGE

Subsection 123(1) clarifies that the next parole review date for offenders whose parole is cancelled or terminated is two years from the date of cancellation or termination.

Subsection 123(2) adds a reference to new subsection 123(5.1) and clarifies language.

Subsection 123(5) makes a technical amendment to the French version to ensure consistency between the English and French versions.

Subsection 123(5.1) **a**dds a new subsection to clarify when the Board is obligated to again review an offender for full parole in cases where full parole has been cancelled or terminated. It maintains the same rule as defined in subsection 123 (5): every two years after the last decision until the offender is released on full parole or statutory release or until there is less than 4 months remaining before the offender's statutory release date.

Subsection 123(6) clarifies the rule that there may be no further application for parole made until one year has elapsed after the Board's decision to cancel or terminate full parole.

Subsection 123(7) prevents an offender from withdrawing their parole application 14 days or less before their hearing date for circumstances that were within their control and prevents victims travelling unnecessarily.

RELATED CLAUSE

Clause 78

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CLAUSE 80

PRESENT SUBSECTION

124. (1) The Board is not required to review the case of an offender who is unlawfully at large at the time prescribed for a review under section 122 or 123, but shall do so as soon as possible after being informed of the offender's return to custody.

PROPOSED SECTION

80. Subsection 124(1) of the Act is replaced by the following:

124. (1) The Board is not required to review the case of an offender who is unlawfully at large during the period prescribed by the regulations for a review under section 122 or 123 but it shall review the case as soon as possible after being informed of the offender's return to custody.

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CLAUSE 80

SUBJECT AND EFFECT

This Clause adds, for clarity, "by regulation" after prescribed and "the case" after review.

REASON FOR CHANGE

This amendment clarifies language to be more explicit about when the Board is required to review the case of an offender who has returned to custody after being unlawfully at large by adding "by regulation" to clarify the word prescribed and adds "the case" to clarify the word review.

RELATED CLAUSES

Clauses 78 and 79

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CLAUSE 81

PRESENT SUBSECTION

(5) Subject to subsections 130(4) and (6), the statutory release date of an offender whose parole or statutory release has been revoked is the day on which the offender has served two thirds of the unexpired portion of the sentence after being recommitted to custody as a result of a suspension or a revocation under section 135.

PROPOSED SECTION

81. Subsection 127(5) of the Act is replaced by the following:

(5) Subject to subsections 130(4) and (6), the statutory release date of an offender whose parole or statutory release is revoked is

(*a*) the day on which they have served two thirds of the unexpired portion of the sentence after being recommitted to custody as a result of a suspension or revocation under section 135; or

(*b*) if an additional sentence is imposed after the offender is recommitted to custody as a result of a suspension or revocation under section 135, the day on which they have served two thirds of the portion of the sentence — including the additional sentence — that begins on the day on which they are recommitted and ends on the day on which the sentence expires.

(5.1) If an offender receives an additional sentence for an offence under an Act of Parliament and their parole or statutory release is not revoked, their statutory release date is the day on which they have served, from the earlier of the day on which they are recommitted to custody as a result of the suspension of their parole or statutory release and the day on which they are recommitted to custody as a result of the additional sentence,

(*a*) any time remaining before the statutory release date in respect of the sentence they are serving when the additional sentence is imposed; and

(*b*) two thirds of the period that equals the difference between the length of the sentence that includes the additional sentence and the length of the sentence that they are serving when the additional sentence is imposed.

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CLAUSE 81

SUBJECT AND EFFECT

This Clause amends subsection 127(5) to clarify the statutory release date of an offender who receives an additional sentence while on parole or statutory release where it is revoked and adds a new subsection 127(5.1) to clarify the statutory release date of an offender who receives a sentence while on parole or statutory release where it is not revoked.

REASON FOR CHANGE

Changes to subsection 127(5) of the Act clarify the rule for calculating the statutory release date of an offender whose parole or statutory release has been revoked: the offender must serve 2/3 of the unexpired portion of his or her sentence, including any additional sentence, if applicable.

For changes to subsection 5.1 of the Act, since the automatic revocation of offenders receiving an additional sentence while on parole or statutory release has been declared to be unconstitutional and therefore of no force and effect in the case of *Illes v Kent Institution* (2001), 160 *C.C.C.* (3d) 307 (B.C.S.C.), this new subsection has been added to the Act to set out the sentence calculation rule where an offender on parole or statutory release receives an additional sentence and the release is not revoked. An offender on parole or statutory release that has not been revoked and who has received an additional sentence would serve any portion that remains to be served until the statutory release date on the current sentence plus two-thirds of the additional sentence.

RELATED CLAUSE

Clause 89

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CLAUSE 82

PRESENT SUBSECTION

Not applicable

PROPOSED SECTION

82. The Act is amended by adding the following after section 127:

127.1 Subject to this Act, a young person in respect of whom a youth sentence is imposed under paragraph 42(2)(*n*), (*o*), (*q*), or (*r*) of the *Youth Criminal Justice Act* and who is transferred to a penitentiary under subsection 89(2), 92(2), or 93(2) of that Act is entitled to be released from the penitentiary by virtue of statutory release on the day in which the custodial portion of their youth sentence would have expired.

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CLAUSE 82

SUBJECT AND EFFECT

The addition of this Clause provides for a statutory release date for an offender in penitentiary who is subject to a youth sentence.

REASON FOR CHANGE

Subject to the other provisions of the *Corrections and Conditional Release Act*, young persons sentenced under the *Youth Criminal Justice Act* to a youth sentence (custody and supervision order) which contains a specific supervision period and who are transferred to penitentiary will be released under statutory release on the date upon which they would have been released on supervised release in accordance with the supervision order of the youth sentence.

RELATED CLAUSE

None

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CLAUSE 83

PRESENT SUBSECTION

128. (3) Despite subsection (1), for the purposes of paragraph 50(*b*) of the *Immigration and Refugee Protection Act* and section 40 of the *Extradition Act*, the sentence of an offender who has been released on parole, statutory release or an unescorted temporary absence is deemed to be completed unless the parole or statutory release has been suspended, terminated or revoked or the unescorted temporary absence is suspended or cancelled or the offender has returned to Canada before the expiration of the sentence according to law.

(4) Despite this Act or the *Prisons and Reformatories Act*, an offender against whom a removal order has been made under the *Immigration and Refugee Protection Act* is ineligible for day parole or an unescorted temporary absence until the offender is eligible for full parole.

PROPOSED SECTION

83. Subsection 128(3) and (4) of the Act are replaced by the following:

(3) Despite subsection (1), for the purposes of paragraph 50(*b*) of the *Immigration and Refugee Protection Act* and section 64 of the *Extradition Act*, the sentence of an offender who has been released on parole, statutory release or an unescorted temporary absence is deemed to be completed unless the parole or statutory release has been suspended, terminated or revoked, the unescorted temporary absence is suspended or cancelled or the offender has returned to Canada before the expiration of the sentence according to law.

(4) Despite this Act, the *Prisons and Reformatories Act* and the *Criminal Code*, an offender against whom a removal order has been made under the *Immigration and Refugee Protection Act* is not eligible for day parole or an unescorted temporary absence until they are eligible for full parole.

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CLAUSE 83

SUBJECT AND EFFECT

This Clause makes technical amendments by changing the section reference to the *Extradition Act* in subsection 128(3) and by adding a reference the *Criminal Code* to subsection 128(4) as part of the legislation which this provision supersedes.

REASON FOR CHANGE

This Clause changes reference in *Extradition Act* from section 40 to section 64 postponement of sentence order. This Clause also adds the *Criminal Code* to the list of legislation which this provision supersedes. The Clause also prohibits an offender who has a deportation order from being considered for temporary absences and day parole until the full parole date and ensures that a foreign offender who is subject to a deportation order serves at least one third of their sentence in penitentiary before being deported.

RELATED CLAUSES

None

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CLAUSE 84

PRESENT SUBSECTION

129. (2) After the review of the case of an offender pursuant to subsection (1), and not later than six months before the statutory release date, the Service shall refer the case to the Board together with all the information that, in its opinion, is relevant to it, where the Service is of the opinion

(*a*) in the case of an offender serving a sentence that includes a sentence for an offence set out in Schedule I, that

(i) the commission of the offence caused the death of or serious harm to another person and there are reasonable grounds to believe that the offender is likely to commit an offence causing death or serious harm to another person before the expiration of the offender's sentence according to law, or

(ii) the offence was a sexual offence involving a child and there are reasonable grounds to believe that the offender is likely to commit a sexual offence involving a child before the expiration of the offender's sentence according to law; or

(*b*) in the case of an offender serving a sentence that includes a sentence for an offence set out in Schedule II, that there are reasonable grounds to believe that the offender is likely to commit a serious drug offence before the expiration of the offender's sentence according to law.

(3) Where the Commissioner believes on reasonable grounds that an offender who is serving a sentence of two years or more is likely, before the expiration of the sentence according to law, to commit an offence causing death or serious harm to another person, a sexual offence involving a child or a serious drug offence, the Commissioner shall refer the case to the Chairperson of the Board together with all the information in the possession of the Service that, in the Commissioner's opinion, is relevant to the case, as soon as is practicable after forming that belief, but the referral may not be made later than six months before the offender's statutory release date unless

(*a*) the Commissioner formed that belief on the basis of behaviour of the offender during the six months preceding the statutory release date or on the basis of information obtained during those six months; or

(*b*) as a result of any recalculation of the sentence under this Act, the statutory release date of the offender has passed or less than six months remain before that date.

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(*c*) [Repealed, 1995, c. 42, s. 44]
...

(9) In this section and sections 130 and 132,
...

"sexual offence involving a child" means

(*a*) an offence under any of the following provisions of the *Criminal Code* that was prosecuted by way of indictment, namely,

(i) section 151 (sexual interference),

(ii) section 152 (invitation to sexual touching),

(iii) section 153 (sexual exploitation),

(iv) subsection 160(3) (bestiality in presence of child or inciting child to commit bestiality),

(v) section 170 (parent or guardian procuring sexual activity by child),

(vi) section 171 (householder permitting sexual activity by child),

(vii) section 172 (corrupting children),

(viii) subsection 212(2) (living off the avails of prostitution by a child), and

(ix) subsection 212(4) (obtaining sexual services of a child),

PROPOSED SECTION

84. (1) Subsections 129(2) and (3) of the Act are replaced by the following:

(2) The Service shall, more than six months before the day on which an offender is entitled to be released on statutory release, refer the case to the Board — and provide the Board with any information that, in the Service's opinion, is relevant to the case — if the Service is of the opinion that

(*a*) in the case of an offender who is serving a sentence that includes a sentence for an offence set out in Schedule I, including an offence set out in Schedule I that is punishable under section 130 of the *National Defence Act*,

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(i) the commission of the offence caused the death of or serious harm to another person and there are reasonable grounds to believe that the offender is likely to commit an offence causing death or serious harm to another person before the expiration of the offender's sentence according to law, or

(ii) the offence was a sexual offence involving a child and there are reasonable grounds to believe that the offender is likely to commit a sexual offence involving a child or an offence causing death or serious harm to another person before the expiration of the offender's sentence according to law; or

(*b*) in the case of an offender who is serving a sentence that includes a sentence for an offence set out in Schedule II, including an offence set out in Schedule II that is punishable under section 130 of the *National Defence Act*, there are reasonable grounds to believe that the offender is likely to commit a serious drug offence before the expiration of the offender's sentence according to law.

(3) If the Commissioner believes on reasonable grounds that an offender is likely, before the expiration of the sentence according to law, to commit an offence causing death or serious harm to another person, a sexual offence involving a child or a serious drug offence, the Commissioner shall refer the case to the Chairperson of the Board together with all the information in the possession of the Service that, in the Commissioner's opinion, is relevant to the case, as soon as practicable after forming that belief. The referral must be made more than six months before the offender's statutory release date unless

(*a*) the Commissioner formed that belief on the basis of the offender's behaviour or information obtained during those six months; or

(*b*) as a result of a change in the statutory release date due to a recalculation, the statutory release date has passed or the offender is entitled to be released on statutory release during those six months.

(2) Paragraph (*a*) of the definition "sexual offence involving a child" in subsection 129(9) of the Act is amended by adding the following after subparagraph (iv):

(iv.1) section 163.1 (child pornography),

(3) Paragraph (*a*) of the definition "sexual offence involving a child" in subsection 129(9) of the Act is amended by adding the following after subparagraph (vii):

(vii.1) section 172.1 (luring a child),

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CLAUSE 84

SUBJECT AND EFFECT

This Clause requires the Service to refer statutory release cases to the Board more than six months prior to an offender's statutory release eligibility date, thereby providing more timely referrals than is currently mandated (i.e., at least six months prior to statutory release eligibility). The Clause also ensures that within the criteria for detention to be considered by the Board, than an offence causing death or serious harm to another person is included in both sub-clauses as a measure of utmost certainty and caution even though the concept is already expressed in paragraph 129(2)(i).

This Clause amends subsection 129(9) to add child pornography (section 163.1 of the *Criminal Code*) to the offences defined as sexual offences involving a child to allow detention for this type of offence.

REASON FOR CHANGE

This Clause adds child pornography (section 163.1 of the *Criminal Code*) to the list of offences defined as sexual offences against a child for which an offender may be detained. The Clause also adds luring a child (section 172.1 of the *Criminal Code*) to the list of offences defined as sexual offences against a child for which an offender may be detained.

RELATED CLAUSE

Clause 85

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CLAUSE 85

PRESENT SUBSECTION

130. (5) An offender who is in custody pursuant to an order made under subsection (3) or amended under paragraph (3.3)(*b*) is not eligible to be released from imprisonment under this Act except on a temporary absence with escort for medical purposes under Part I.

PROPOSED SECTION

85. Subsection 130(5) of the Act is replaced by the following:

(5) An offender who is in custody pursuant to an order made under subsection (3) or amended under paragraph (3.3)(*b*) is not eligible to be released from imprisonment, except on a temporary absence with escort under Part I for medical or administrative reasons.

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CLAUSE 85

SUBJECT AND EFFECT

This Clause amends subsection 130(5) to add administrative reasons as grounds for granting an escorted temporary absence to a detained offender.

REASON FOR CHANGE

These changes add administrative reasons to the current provision as grounds for granting an escorted temporary absence to a detained offender (currently only for medical reasons) and maintain the notion of current subsection130(5) with respect to prohibiting any form of release of offenders under detention, except as specified under this subsection.

RELATED CLAUSE

Clause 84

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CLAUSE 86

PRESENT SUBSECTION

133. (4.1) In order to facilitate the successful reintegration into society of an offender, the releasing authority may, as a condition of statutory release, require that the offender reside in a community-based residential facility or in a psychiatric facility, where the releasing authority is satisfied that, in the absence of such a condition, the offender will present an undue risk to society by committing an offence listed in Schedule I before the expiration of the offender's sentence according to law.

PROPOSED SECTION

86. Subsection 133(4.1) of the Act is replaced by the following:

(4.1) In order to facilitate the successful reintegration into society of an offender, the releasing authority may, as a condition of statutory release, require that the offender reside in a community-based residential facility or a psychiatric facility if the releasing authority is satisfied that, in the absence of such a condition, the offender will present an undue risk to society by committing, before the expiration of their sentence according to law, an offence set out in Schedule I or an offence under section 467.11, 467.12 or 467.13 of the *Criminal Code*.

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CLAUSE 86

SUBJECT AND EFFECT

This Clause amends subsection 133(4.1) to add the risk of committing a criminal organization offence to the grounds on which the Board may impose as a condition of statutory release the requirement to reside in a psychiatric facility or community residential facility.

REASON FOR CHANGE

This change adds to the grounds on which the Board may impose as a condition of statutory release the requirement to reside in a psychiatric facility or community residential facility the risk of committing the following offences:

- an offence under 467.11 (participation in activities of a criminal organization);

- 467.12 (commission of an offence for a criminal organization); and

- 467.13 (instructing the commission of an offence for a criminal organization) of the *Criminal Code.*

RELATED CLAUSE

None

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CLAUSE 87

PRESENT SUBSECTION

134. (2) In this section, "parole supervisor" means

(*a*) a staff member as defined in subsection 2(1); or

(*b*) a person entrusted by the Service with the guidance and supervision of an offender on parole, statutory release or unescorted temporary absence.

PROPOSED SECTION

Subsection 134(2) of the Act is repealed.

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CLAUSE 87

SUBJECT AND EFFECT

This Clause repeals subsection 134(2).

REASON FOR CHANGE

This is a technical change that adds the definition of parole supervisor to the definitions section of Part II of the *Corrections and Condition Release Act* (section 99).

RELATED CLAUSES

Clause 88

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CLAUSE 88

PRESENT SUBSECTION

(2) In this section, "parole supervisor" means

(*a*) a staff member as defined in subsection 2(1); or

(*b*) a person entrusted by the Service with the guidance and supervision of an offender on parole, statutory release or unescorted temporary absence.

PROPOSED SECTION

88. Subsection 134.2(2) of the Act is repealed.

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CLAUSE 88

SUBJECT AND EFFECT

This Clause repeals subsection 134(2).

REASON FOR CHANGE

This is a technical change that adds the definition of parole supervisor has been added to the definitions section of Part II of the *Corrections and Conditional Release Act* (section 99).

RELATED CLAUSE

Clause 87

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CLAUSE 89

PRESENT SUBSECTION

135. (2) A person designated pursuant to subsection (1) may, by warrant, order the transfer to penitentiary of an offender who is recommitted to custody pursuant to subsection (1) in a place other than a penitentiary.

(3) The person who signs a warrant pursuant to subsection (1) or any other person designated pursuant to that subsection shall, forthwith after the recommitment of the offender, review the offender's case and

(*a*) where the offender is serving a sentence of less than two years, cancel the suspension or refer the case to the Board together with an assessment of the case, within fourteen days after the recommitment or such shorter period as the Board directs; or

(*b*) in any other case, within thirty days after the recommitment or such shorter period as the Board directs, cancel the suspension or refer the case to the Board together with an assessment of the case stating the conditions, if any, under which the offender could in that person's opinion reasonably be returned to parole or statutory release.

(4) The Board shall, on the referral to it of the case of an offender serving a sentence of less than two years, review the case and, within the period prescribed by the regulations, either cancel the suspension or terminate or revoke the parole.

(5) The Board shall, on the referral to it of the case of an offender serving a sentence of two years or more, review the case and, within the period prescribed by the regulations, unless the Board grants an adjournment at the offender's request,

(*a*) cancel the suspension, where the Board is satisfied that, in view of the offender's behaviour since release, the offender will not, by reoffending before the expiration of the offender's sentence according to law, present an undue risk to society;

(*b*) where the Board is not satisfied as provided in paragraph (*a*), terminate the parole or statutory release of the offender if it was suspended by reason of circumstances beyond the offender's control or revoke it in any other case; or

(*c*) where the offender is no longer eligible for the parole or entitled to be released on statutory release, terminate or revoke it.

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(6) If in the Board's opinion it is necessary and reasonable to do so in order to protect society or to facilitate the reintegration of the offender into society, the Board, when it cancels a suspension of the parole or statutory release of an offender, may

(a) reprimand the offender in order to warn the offender of the Board's dissatisfaction with the offender's behaviour since release;

(*b*) alter the conditions of the parole or statutory release; and

(*c*) order the cancellation not to take effect until the expiration of a specified period not exceeding thirty days after the date of the Board's decision, where the offender violated the conditions of parole or statutory release on the occasion of the suspension and on at least one previous occasion that led to a suspension of parole or statutory release during the offender's sentence.

(6.1) Where a person referred to in subsection (3) or the Board cancels a suspension under this section, the person or the Board, as the case may be, shall forward a notification of the cancellation of the suspension or an electronically transmitted copy of the notification to the person in charge of the facility in which the offender is being held.

(7) Independently of subsections (1) to (6), where the Board is satisfied that the continued parole or statutory release of an offender would constitute an undue risk to society by reason of the offender reoffending before the expiration of the sentence according to law, the Board may, at any time,

(*a*) where the offender is no longer eligible for the parole or entitled to be released on statutory release, terminate or revoke the parole or statutory release; or

(*b*) where the offender is still eligible for the parole or entitled to be released on statutory release,

(i) terminate the parole or statutory release, where the undue risk to society is due to circumstances beyond the offender's control, or

(ii) revoke the parole or statutory release, where the undue risk to society is due to circumstances within the offender's control.

(8) The Board may exercise its power under subsection (7) notwithstanding any new sentence to which the offender becomes subject after being released on parole or statutory release, whether or not the new sentence is in respect of an offence committed before or after the offender's release on parole or statutory release.

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(9) Where the Board exercises its power under subsection (7), it shall review its decision at times prescribed by the regulations, at which times it shall either confirm or cancel its decision.

(9.1) Where an offender whose parole or statutory release has not been terminated or revoked is incarcerated as a result of an additional sentence for an offence under an Act of Parliament, the parole or statutory release, as the case may be, is revoked on the day on which the offender is incarcerated as a result of the additional sentence.

(9.2) Subsection (9.1) does not apply where the additional sentence is to be served concurrently with, and is in respect of an offence committed before the commencement of, the sentence to which the parole or statutory release applies.

(9.3) Where an offender who is released on parole receives an additional sentence described in subsection (9.2) and the day determined in accordance with section 119, 120 or 120.2, as the case may be, on which the offender is eligible for parole is later than the day on which the offender received the additional sentence, the parole becomes inoperative and the offender shall be reincarcerated.

(9.4) Unless the lieutenant governor in council of a province in which there is a provincial parole board makes a declaration under subsection 113(1) that subsection (9.1) applies in respect of offenders under the jurisdiction of that provincial parole board, subsection (9.1) does not apply in respect of such offenders, other than an offender who

(*a*) is serving a sentence in a provincial correctional facility pursuant to an agreement entered into under paragraph 16(1)(*a*); or

(*b*) as a result of receiving an additional sentence referred to in subsection (9.1), is required, pursuant to section 743.1 of the *Criminal Code*, to serve the sentence in a penitentiary.

(9.5) Where an offender to whom subsection (9.1) does not apply who is on parole that has not been revoked or terminated receives an additional sentence, for an offence under an Act of Parliament, that is to be served consecutively with the sentence the offender was serving when the additional sentence was imposed, the parole becomes inoperative and the offender shall be reincarcerated until the day on which the offender has served, from the day on which the additional sentence was imposed, the period of ineligibility in relation to the additional sentence and, on that day, the parole is resumed, subject to the provisions of this Act, unless, before that day, the parole has been revoked or terminated.

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(10) For the purposes of this Part, an offender who is in custody by virtue of this section continues to serve the offender's sentence.

(11) For the purposes of this Act, where a suspension of parole or statutory release is cancelled, the offender is deemed, during the period beginning on the day of the issuance of the suspension and ending on the day of the cancellation of the suspension, to have been serving the sentence to which the parole or statutory release applies.

PROPOSED SECTION

89. (1) Subsection 135(2) of the Act is replaced by the following:

(1.1) If an offender who is on parole or statutory release receives an additional sentence, other than a conditional sentence under section 742.1 of the *Criminal Code* that is being served in the community or an intermittent sentence under section 732 of that Act, for an offence under an Act of Parliament, their parole or statutory release, as the case may be, is suspended on the day on which the additional sentence is imposed.

(1.2) If an offender's parole or statutory release is suspended under subsection (1.1), a member of the Board or a person designated, by name or position, by the Chairperson of the Board or the Commissioner may, by warrant, authorize the offender's apprehension and recommitment to custody until

(*a*) the suspension is cancelled;

(*b*) the parole or statutory release is terminated or revoked; or

(*c*) the sentence expires according to law.

(2) A person designated under subsection (1) may, by warrant, order the transfer to a penitentiary of an offender who is recommitted to custody under subsection (1) or (1.2) or as a result of an additional sentence referred to in subsection (1.1) in a place other than a penitentiary.

(2) The portion of subsection 135(3) of the Act before paragraph (*a*) is replaced by the following:

(3) Subject to subsection (3.1), the person who signs a warrant under subsection (1) or any other person designated under that subsection shall, immediately after the recommitment of the offender, review the offender's case and

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(3) Section 135 of the Act is amended by adding the following after subsection (3):

(3.1) If an offender's parole or statutory release is suspended under subsection (1.1), or if an offender whose parole or statutory release is suspended under subsection (1) receives an additional sentence referred to in subsection (1.1), the suspension may not be cancelled and the case is to be referred to the Board by a person designated by name or position by the Commissioner, together with an assessment of the case, within the applicable number of days set out in subsection (3).

(4) Subsection 135(5) of the Act is replaced by the following:

(5) The Board shall, on the referral to it of the case of an offender who is serving a sentence of two years or more, review the case and — within the period prescribed by the regulations unless the Board, at the offender's request, adjourns the hearing or a member of the Board or a person designated, by name or position, by the Chairperson postpones the review —

(*a*) if the Board is satisfied that the offender will, by reoffending before the expiration of their sentence according to law, present an undue risk to society,

(i) terminate the parole or statutory release if the undue risk is due to circumstances beyond the offender's control, and

(ii) revoke it in any other case;

(*b*) if the Board is not satisfied as in paragraph (*a*), cancel the suspension; and

(*c*) if the offender is no longer eligible for parole or entitled to be released on statutory release, cancel the suspension or terminate or revoke the parole or statutory release.

(5) Section 135 of the Act is amended by adding the following after subsection (6.1):

(6.2) If the Board cancels a suspension of parole under subsection (5) and the day on which the offender is eligible for parole, determined in accordance with any of sections 119 to 120.3, is later than the day on which the parole suspension is cancelled, the day or full parole is, subject to subsection (6.3), resumed on the day parole eligibility date or the full parole eligibility date, as the case may be.

(6.3) If an offender's parole is to resume under subsection (6.2), the Board may —before the parole resumes and after a review of the case based on

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information with which it could not reasonably have been provided at the time the parole suspension was cancelled — cancel the parole or, if the offender has been released, terminate the parole.

(6.4) If the Board exercises its power under subsection (6.3) in the absence of a hearing, it shall, within the period prescribed by the regulations, review — and either confirm or cancel — its decision.

(6) Subsection 135(9.1) to (9.5) of the Act are replaced by the following:

(9.1) Unless the lieutenant governor in council of a province in which there is a provincial parole board makes a declaration under subsection 113(1) that subsection (1.1) applies in respect of offenders under the jurisdiction of that provincial parole board, subsection (1.1) does not apply in respect of such offenders, other than an offender who

(*a*) is serving a sentence in a provincial correctional facility pursuant to an agreement entered into under paragraph 16(1)(*a*); or

(*b*) as a result of receiving an additional sentence referred to in subsection (1.1), is required, under section 743.1 of the *Criminal Code*, to serve the sentence in a penitentiary.

(9.2) If an offender to whom subsection (1.1) does not apply, and who is on parole that has not been revoked or terminated, receives an additional sentence that is to be served consecutively with the sentence the offender was serving when the additional sentence was imposed, the parole becomes inoperative and the offender shall be reincarcerated until the day on which the offender has served, from the day on which the additional sentence was imposed, the period of ineligibility in relation to the additional sentence. On that day, the parole is resumed, subject to the provisions of this Act, unless, before that day, the parole has been revoked or terminated.

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CLAUSE 89

SUBJECT AND EFFECT

Subclause 89(1) adds subsections 135(1.1) and (1.2) of the Act to provide for the automatic suspension of an offender who receives an additional sentence while on parole or statutory release and to authorize his or her apprehension and recommitment. Further it amends subsection 135(2) to include the authority to transfer to penitentiary offenders who have been recommitted as a result of the automatic suspension.

Subclause 89(2) amends subsection 135(3) of the Act to make it subject to the new subsection 135(3.1) that prohibits the cancellation by the Service of a suspension of parole or statutory release of an offender who receives an additional sentence while on parole or statutory release or while his or her parole or statutory release is suspended.

Subclause 89(3) adds subsection 135(3.1) to the Act that states that the suspension of the parole or statutory release of an offender who has received an additional sentence while on parole or statutory release or under suspension cannot be cancelled by the Service but must be referred with an assessment to the Board for a decision within the timeframe set out in subsection 135(3).

Subclause 89(4) amends subsection 135(5) to the Act to clarify that the Board can adjourn a hearing for the purpose of reviewing the suspension of an offender's parole or statutory release or that the Chair or a person designated by the Chair can postpone such a hearing.

Subclause 89(5) adds subsection 135(6.2) to the Act which allows the Board to cancel the suspension of parole and clarifies the, date of future day parole or full parole eligibility. In addition, it adds subsection 135(6.3) that states that where the Board cancels suspension, it may cancel the parole before it resumes or terminate parole if the offender has been released based on new information that could not have been reasonably provided at the time of the cancellation of the suspension. Finally, it adds subsection 135(6.4) that states that when the decision to cancel or terminate parole was made without a hearing, the Board shall review its decision by way of hearing and either cancel or confirm its decision.

Subclause 89(6) strikes the current subsections 135(9.1) to (9.5) of the Act and renumbers the current subsections 135(9.4) and (9.5) as (9.1) and (9.2). The proposed subsection 135(9.1) would give the provinces, with a provincial parole board authority to opt in to the automatic suspension scheme under 135(1.1). The proposed subsection 135(9.2) states that where a province has not opted in to the automatic suspension scheme and where the parole eligibility date of a

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paroled offender under its jurisdiction is placed in the future as a result of the imposition of an additional sentence and the parole is not revoked or terminated, parole becomes inoperative and is resumed on the new parole eligibility date unless it is revoked or terminated before that date.

REASON FOR CHANGE

Subclause 89(1) adds a new provision to automatically suspend an offender who is on parole or statutory release and who receives an additional sentence, other than a conditional sentence or intermittent sentence. This automatic suspension scheme replaces the previous automatic revocation scheme which was struck down by the courts because of the absence of the requirement for the Board to review the case after the revocation.

Changes to subsection 135(1.2) give the Board and the Commissioner the power to authorize the apprehension and recommitment of an offender who has been automatically suspended until: the suspension is cancelled; parole or statutory release is revoked or terminated; or, the sentence expires.

Subclause 89(2) amends subsection 135(2) of the Act to include in the authority to transfer to penitentiary offenders recommitted as a result of the automatic suspension

Subclause 89(3) amends subsection 135(3) is amended to make it subject to the new subsection 135(3.1) that prohibits the cancellation of the automatic suspension resulting from the imposition of an additional sentence while an offender is on parole or statutory release or the suspension of an offender who receives an additional sentence while suspended. Under this subsection, the Service reviews the case of an offender who is suspended and, with the exception of those who receive an additional sentence, can cancel the suspension within the required time after the recommitment or refer the case to the Board with an assessment thereof.

Subclause 89(4) ads a provision that prohibits the Service from cancelling the suspension of parole or statutory release when the offender has received an additional sentence while on parole or statutory release or under suspension. This obligates the Service to refer the case to the Board, with an assessment of the case, within 14 days if offender is serving two years or less, or within 30 days if the offender is serving two years or more.

Subsection 89(5) clarifies that the Board can adjourn a hearing (an action that takes place after the hearing begins) with respect to making a decision on the suspension of an offender's parole or statutory release, or that the Chair or someone designated by the Chair may postpone such a hearing (an action that

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takes place before the hearing begins) – both actions require the offender's consent.

Subclause 89(6) adds a provision to clarify that, when the Board cancels the suspension of an offender whose parole eligibility date is in the future because of the imposition of an additional sentence, the day parole or full parole – whichever was operative at the time of the cancellation – is resumed on the new day parole eligibility date or full parole eligibility date.

This subclause also authorize the Board to cancel the parole if the offender has not been released or to terminate the parole if the offender has been released based on information which could not have been reasonably provided to the Board at the time that the decision to cancel the suspension was made under subsection 135(6.2) of the Act.

The addition of subsection 135(6.4) requires the Board to review by way of hearing its decision to cancel or terminate parole under subsection 135(6.3) that was made without a hearing and to either cancel or confirm its decision.

The proposed subsection 135(9.1) replaces the current subsection 135(9.4) of the Act to give provinces authority to opt in to the automatic suspension scheme. The proposed subsection 135(9.1) of the Act would also state that, where a province has not opted in to the automatic suspension scheme, subsection 135(1.1) would apply to a federal offender serving a federal sentence in a provincial institution as a result of an exchange of service agreement or an offender in a provincial institution who becomes subject to a federal sentence because of the imposition of an additional sentence.

Subsection 135(9.2) replaces the current 135(9.5) of the Act to provide that where a province has not opted in to the automatic suspension scheme and where the parole eligibility date of a paroled offender under the jurisdiction of its provincial parole board is placed in the future as a result of the imposition of an additional sentence and the parole is not revoked or terminated, parole becomes inoperative and the offender is incarcerated until parole is resumed on the new parole eligibility date, unless it is revoked or terminated before that date.

RELATED CLAUSES

Clauses 90, 91 and 92

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CLAUSE 90

PRESENT SUBSECTION

135.1 (6) If in the Board's opinion it is necessary and reasonable to do so in order to protect society or to facilitate the reintegration of the offender into society, the Board, when it cancels a suspension of the parole or statutory release of an offender, may

(*a*) cancel the suspension, where the Board is satisfied that, in view of the offender's behavior while being supervised, the resumption of long-term supervision on the same conditions would not constitute a substantial risk to society by reason of the offender reoffending before the expiration of the period of long-term supervision;

PROPOSED SECTION

90. The portion of subsection 135.1(6) of the Act before paragraph (*c*) is replaced by the following:

(6) The Board shall, on the referral to it of the case of an offender, review the case and, before the end of the period referred to in subsection (2),

(*a*) cancel the suspension, if the Board is satisfied that, in view of the offender's behaviour while being supervised, the resumption of long-term supervision would not constitute a substantial risk to society by reason of the offender reoffending before the expiration of the period of long-term supervision; or

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CLAUSE 90

SUBJECT AND EFFECT

This Clause amends subsection 135.1(6) to clarify the timeframe for the review by the Board of a suspension of long-term supervision.

REASON FOR CHANGE

This Clause clarifies the timeframe for review – changed from "within 60 days after referral" to "before the end of the period referred to in subsection 135.1(2)" which is to say not exceeding 90 days from the time of commitment. Currently the timeframe for review is 30 days from the date of commitment for the Service to refer the case to the Board and 60 days, after referral of the case by the Service, for the Board to review the case of an offender whose long term supervision is suspended and render a decision. This change would also remove paragraph 135.1(6)(b) which is seen as redundant and would allow the Board to make the same decisions as under the current provision by authorizing it to either:

- cancel the suspension if there exists no undue risk of re-offending, or

- recommend the laying of a charge of breach of long-term supervision where it appears that a breach has occurred and there is no program of supervision which could protect society from re-offending.

RELATED CLAUSES

Clauses 89, 91and 92

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CLAUSE 91

PRESENT SUBSECTION

136. When the parole or statutory release of an offender is terminated or revoked or where it becomes inoperative pursuant to subsection 135(9.3) or (9.5), a member of the Board or a person designated, by name or by position, by the Chairperson of the Board or by the Commissioner may, by warrant, authorize the apprehension and recommitment to custody of the offender pursuant to section 137.

PROPOSED SECTION

91. Section 136 of the Act is replaced by the following:

136. A member of the Board or a person designated, by name or position, by the Chairperson of the Board or the Commissioner may, by warrant, authorize an offender's apprehension and recommitment to custody if

(*a*) their parole is terminated or revoked or becomes inoperative under subsection 135(9.2); or

(*b*) their statutory release is terminated or revoked or they are no longer entitled to be released on statutory release as a result of a change to their statutory release date under subsection 127(5.1).

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CLAUSE 91

SUBJECT AND EFFECT

This Clause amends section 136 to authorize the issuance of a warrant for the apprehension and recommitment of an offender whose parole becomes inoperative under subsection 135(9.2) or who is no longer entitled to statutory release under subsection 127(5.1).

REASON FOR CHANGE

This Clause changes to reference to 135(9.2) and adds a reference to 127(5.1) to authorize a member of the Board or person designated by the Chairperson of the Board or the Commissioner to issue a warrant for the apprehension and recommitment of an offender whose parole becomes inoperative or who is no longer entitled to statutory release because of the imposition of an additional sentence.

RELATED CLAUSES

Clauses 89, 90 and 92

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CLAUSE 92

PRESENT SUBSECTION

Not applicable

PROPOSED SECTION

92. The Act is amended by adding the following after section 137:

137.1 A peace officer may arrest an offender without warrant for a breach of a condition of their parole, statutory release or unescorted temporary absence unless the peace officer

(*a*) believes on reasonable grounds that the public interest may be satisfied without arresting the person, having regard to all the circumstances including the need to

(i) establish the identity of the person, or

(ii) prevent the continuation or repetition of the breach; and

(*b*) does not believe on reasonable grounds that the person will fail to report to their parole supervisor in order to be dealt with according to law if the peace officer does not arrest the person.

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CLAUSE 92

SUBJECT AND EFFECT

This Clause creates a new provision that empowers a police officer to arrest without warrant of an offender whom they believe is breaching a condition of conditional release.

REASON FOR CHANGE

This Clause creates a new section 137.1 to authorize a peace officer to arrest an offender without warrant for a breach of a condition of their parole, statutory release or unescorted temporary absence unless they believe on reasonable grounds that the public interest may be satisfied without arresting the person, having regard to all the circumstances including the need to establish the identity of the person, or to prevent the continuation or repetition of the breach; and they do not believe on reasonable grounds that the person will fail to report to their parole supervisor in order to be dealt with according to law if they do not arrest the person. This legislative amendment has long been called for by police organizations.

RELATED CLAUSES

Clauses 89, 90 and 91

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CLAUSE 93

PRESENT SUBSECTION

138. (6) Subject to subsections 130(4) and (6), an offender whose parole or statutory release has been revoked is entitled to be released on statutory release in accordance with section 127.

PROPOSED SECTION

93. Subsection 138(6) of the Act is replaced by the following:

(6) Subject to subsections 130(4) and (6), an offender whose parole or statutory release has been revoked is entitled to be released on statutory release in accordance with subsection 127(5).

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CLAUSE 93

SUBJECT AND EFFECT

This Clause amends subsection 138(6) by referencing section 127(5) to prevent the application of case law (Ruest) which erroneously sets the beginning of the sentence as the starting point for calculating the statutory release date when statutory release or parole has been revoked.

REASON FOR CHANGE

This is a technical amendment that prevents the application of case law which erroneously sets the beginning of the sentence as the starting point for calculating the statutory release date when statutory release or parole has been revoked.

RELATED CLAUSE

Clause 81

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CLAUSE 94

PRESENT SUBSECTION

MULTIPLE SENTENCES

PROPOSED SECTION

94. The heading before section 139 of the Act is replaced by the following:

MERGED SENTENCES

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CLAUSE 94

SUBJECT AND EFFECT

This Clause changes the heading before section 139 to "Merged Sentences" for clarity.

REASON FOR CHANGE

Changing the heading to "Merged Sentences" (currently "Multiple Sentences") more accurately describes the relevant provisions.

RELATED CLAUSE

Clause 95

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CLAUSE 95

PRESENT SUBSECTION

139. (1) Where a person who is subject to a sentence that has not expired receives an additional sentence, the person is, for the purposes of the *Criminal Code*, the *Prisons and Reformatories Act* and this Act, deemed to have been sentenced to one sentence commencing at the beginning of the first of those sentences to be served and ending on the expiration of the last of them to be served.

PROPOSED SECTION

95. Subsection 139(1) of the Act is replaced by the following:

139. (1) For the purposes of the *Criminal Code*, the *Prisons and Reformatories Act*, the *International Transfer of Offenders Act* and this Act, a person who is subject to two or more sentences is deemed to have been sentenced to one sentence beginning on the first day of the first of those sentences to be served and ending on the last day of the last of them to be served.

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CLAUSE 95

SUBJECT AND EFFECT

This change amends subsection 139(1) to add a reference to the *International Transfer of Offenders Act* and to clarify the rule with respect to merged sentences.

REASON FOR CHANGE

This change adds reference to the *International Transfer of Offenders Act,* and clarifies rule with respect to the merging of multiple sentences.

RELATED CLAUSE

Clause 94

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CLAUSE 96

PRESENT SUBSECTION

140. (1)(*b*) the first review for full parole pursuant to subsection 123(1) and subsequent reviews pursuant to subsection 123(5);

PROPOSED SECTION

96. (1) Paragraph 140(1)(*b*) of the Act is replaced by the following:

(*b*) the first review for full parole under subsection 123(1) and subsequent reviews under subsection 123(5) or (5.1);

(2) Section 140 of the Act is amended by adding the following after subsection (9):

(10) If they are attending a hearing as an observer,

(*a*) a victim may present a statement describing the harm done to them or loss suffered by them as a result of the commission of the offence and the continuing impact of the commission of the offence — including any safety concerns — and commenting on the possible release of the offender; and

(*b*) a person referred to in subsection 142(3) may present a statement describing the harm done to them or loss suffered by them as a result, and the continuing impact, of any act of the offender in respect of which a complaint was made to the police or Crown attorney or an information laid under the *Criminal Code* — including any safety concerns — and commenting on the possible release of the offender.

(11) If a victim or a person referred to in subsection 142(3) is not attending a hearing, their statement may be presented at the hearing in a format that the Board considers appropriate.

(12) A victim or a person referred to in subsection 142(3) shall, before the hearing, deliver to the Board a transcript of the statement that they plan to present under subsection (10) or (11).

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CLAUSE 96

SUBJECT AND EFFECT

Subclause 96(1) amends Subsection 140(1) of the Act is amended to require that the Board review by way of hearing the cases of offenders whose full parole has been cancelled or terminated.

Subclause 96(2) adds three new subsections to section 140 to require the Board to permit a victim of an offence committed by the offender to read or present a statement that describes the harm done or the loss suffered by the commission of the offence at the hearing of the offender. Further it permits the presentation of the statement in the absence of the victim and requires that a victim deliver a transcript to the Board in advance of the hearing.

REASON FOR CHANGE

Subclause 96(1) adds the cases of offenders whose full parole has been cancelled or terminated under subsection 123(5.1) of the Act to the list of classes of cases that must be reviewed by the Board by way of a hearing.

Subclause 96(2) adds the entitlement of a victim of an offence committed by an offender or a person described in subsection 142(3) of the Act to read or present a statement at the hearing of the offender. It also specifies what the statement can contain – a description of the harm done by, the loss suffered as a result of the commission of and the continuing impact of the offence and comments on possible release of the offender.

Subclause 96(2) would also permit the presentation of a statement in the absence of the victim, that the format of the statement must be considered appropriate by the Board, and requires that victims or persons within the meaning of subsection 142(3) deliver a transcript of their statement to the Board in advance of the hearing.

RELATED CLAUSE

Clause 52

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CLAUSE 97

PRESENT SUBSECTION

141. (3) An offender may waive the right to be provided with the information or summary referred to in subsection (1) or to have it provided within the period referred to, but where an offender has waived that period and any information is received by the offender, or by the Board, so late that the offender or the Board is unable to sufficiently prepare for the review, the offender is entitled to, or the Board may order, a postponement of the review for such reasonable period as the Board determines.

PROPOSED SECTION

97. Subsection 141(3) of the Act is replaced by the following:

(3) An offender may waive the right to be provided with the information or summary or to have it provided within the period referred to in subsection (1). If they waive the latter right and they receive information so late that it is not possible for them to prepare for the review, they are entitled to a postponement and a member of the Board or a person designated by name or position by the Chairperson of the Board shall, at the offender's request, postpone the review for the period that the member or person determines. If the Board receives information so late that it is not possible for it to prepare for the review, a member of the Board or a person designated by name or position by the Chairperson of the Board may postpone the review for any reasonable period that the member or person determines.

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CLAUSE 97

SUBJECT AND EFFECT

This Clause amends subsection 141(3) to authorize a person designated by the Chairperson of the Board or a Board member to postpone a review of an offender's case at the offender's request or the Board's own motion where information is received so late by the Board that either party cannot prepare for the review.

REASON FOR CHANGE

This is a technical amendment that permits a person designated by the Chairperson of the Board to postpone for a reasonable period of time a review at the offender's request or on the Board's own motion when information is received so late by the Board or the offender that either party cannot prepare for the review – currently only Board members are so authorized.

RELATED CLAUSES

None

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CLAUSE 98

PRESENT SUBSECTION

142. (*b*)(v) any of the conditions attached to the offender's unescorted temporary absence, parole or statutory release,

PROPOSED SECTION

98. (1) Subparagraph 142(1)(*b*)(v) of the Act is replaced by the following:

(v) any of the conditions attached to the offender's unescorted temporary absence, parole or statutory release and the reasons for any unescorted absence,

(2) Subparagraph 142(1)(*b*) of the Act is amended by striking out "and" at the end of subparagraph (vii), by adding "and" at the end of subparagraph (viii) and by adding the following after subparagraph (viii):

(ix) the reason for a waiver of the right to a hearing under subsection 140(1) if the offender gives one.

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CLAUSE 98

SUBJECT AND EFFECT

This Clause amends subsection 142(1) to include the reasons for a waiver and for an unescorted temporary absence.

REASON FOR CHANGE

This subsection includes reasons for any unescorted absences, as well as reasons for a waiver of the right to a hearing in the list of information that may be disclosed, upon request, by the National Parole Board to a registered victim.

RELATED CLAUSE

Clause 52

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CLAUSE 99

PRESENT SUBSECTION

144. (1) The Board shall maintain a registry of the decisions rendered by it under this Part and its reasons for each such decision.

PROPOSED SECTION

144. (1) The Board shall maintain a registry of the decisions rendered by it under this Part or under paragraph 746.1(2)(*c*) or 3(*c*) of the *Criminal Code* and its reasons for those decisions.

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CLAUSE 99

SUBJECT AND EFFECT

This Clause amends subsection 144(1) to include decisions made by the Board with respect to offenders sentenced to imprisonment for life without eligibility for parole for a specified number of years under paragraph 746.1(2)(c) or 3(c) of the *Criminal Code* in the registry.

REASON FOR CHANGE

This Clause includes decisions made by the Board with respect to offenders sentenced to imprisonment for life without eligibility for parole for a specified number of years under paragraph 746.1(2)(c) or 3(c) of the *Criminal Code* in the decision registry.

RELATED CLAUSE

None

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CLAUSE 100

PRESENT SUBSECTION

146. (1) There shall be a division of the Board known as the Appeal Division, consisting of not more than six full-time members designated by the Governor in Council on the recommendation of the Minister from among the members appointed pursuant to section 103, and one of those members shall be designated Vice-Chairperson, Appeal Division.

PROPOSED SECTION

100. Subsection 146(1) of the Act is replaced by the following:

146. (1) There shall be a division of the Board known as the Appeal Division, consisting of not more than six full-time members designated by the Governor in Council on the recommendation of the Minister from among the members appointed pursuant to section 103, and one of those members shall be designated Vice-Chairperson, Appeal Division.

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CLAUSE 100

SUBJECT AND EFFECT

This Clause amends the subsection 146(1) to permit the appointment of the part-time members to the Appeal Division of the Board.

REASON FOR CHANGE

This amendment would now permit a number of part-time members to be appointed to the Appeal Division in addition to the six full-time members for short-term increases in capacity when there is a need due to temporary spikes in workload demands and to manage short-term vacancies.

RELATED CLAUSES

Clauses 22 and 73

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CLAUSE 101

PRESENT SUBSECTION

Not applicable

PROPOSED SECTION

101. The Act is amended by adding the following after section 154:

154.1 A member of the Board is not a competent or compellable witness in any civil proceedings in respect of any matter coming to their knowledge in the course of the exercise or purported exercise of their functions under this or any other Act of Parliament.

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CLAUSE 101

SUBJECT AND EFFECT

The addition of this subsection specifies that a Board member is not a competent or a compellable witness in any civil proceeding in respect of matters coming to their knowledge in the course of the exercise of their functions under this or any other Act of Parliament.

REASON FOR CHANGE

This change sets out in law that members of the Board are not competent or compellable to appear as witnesses in any civil proceeding relating to a matter which came to their knowledge in the course of the exercise of their functions under this or any other Act of Parliament. The new section affords members of the Board appropriate protection when, during the course of the exercise of their function, they consider information provided by third parties. Board members will continue to determine the relevance of the information to the case at hand as well as its validity and reliability without being concerned about being compelled to appear as a witness in civil litigation relating to the information.

RELATED CLAUSE

None

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CLAUSE 102

PRESENT SUBSECTION

Not applicable

PROPOSED SECTION

102. Section 157 of the Act is amended by adding the following in alphabetical order:

"statutory release" has the same meaning as in Part II.

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CLAUSE 102

SUBJECT AND EFFECT

This Clause adds "statutory release" to the Definitions under Part III of the Act that applies to the office of the Correctional Investigator.

REASON FOR CHANGE

This change adds "statutory release" to the definition section in Part III and defines it as having the same meaning as in Part II.

RELATED CLAUSE

None

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CLAUSE 103

PRESENT SUBSECTION

SCHEDULE I

1. An offence under any of the following provisions of the *Criminal Code*, that was prosecuted by way of indictment:

(a) section 75 (piratical acts);

(*a.1*) section 76 (hijacking);

(*a.2*) section 77 (endangering safety of aircraft or airport);

(*a.3*) section 78.1 (seizing control of ship or fixed platform);

(*a.4*) paragraph 81(1)(*a*), (*b*) or (*d*) (use of explosives);

(*a.5*) paragraph 81(2)(*a*) (causing injury with intent);

(*b*) subsection 85(1) (using firearm in commission of offence);

(*b.1*) subsection 85(2) (using imitation firearm in commission of offence);

(*c*) subsection 86(1) (pointing a firearm);

(*d*) section 144 (prison breach);

(*e*) section 151 (sexual interference);

(*f*) section 152 (invitation to sexual touching);

(*g*) section 153 (sexual exploitation);

(*h*) section 155 (incest);

(*i*) section 159 (anal intercourse);

(*j*) section 160 (bestiality, compelling, in presence of or by child);

(*k*) section 170 (parent or guardian procuring sexual activity by child);

(*l*) section 171 (householder permitting sexual activity by or in presence of child);

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(*m*) section 172 (corrupting children);

(*n*) subsection 212(2) (living off the avails of prostitution by a child);

(*o*) subsection 212(4) (obtaining sexual services of a child);

(*o.1*) section 220 (causing death by criminal negligence);

(*o.2*) section 221 (causing bodily harm by criminal negligence);

(*p*) section 236 (manslaughter);

(*q*) section 239 (attempt to commit murder);

(*r*) section 244 (discharging firearm with intent);

(*s*) section 246 (overcoming resistance to commission of offence);

(*s.1*) subsections 249(3) and (4) (dangerous operation causing bodily harm and dangerous operation causing death);

(*s.2*) subsections 255(2) and (3) (impaired driving causing bodily harm and impaired driving causing death);

(*s.3*) section 264 (criminal harassment);

(*t*) section 266 (assault);

(*u*) section 267 (assault with a weapon or causing bodily harm);

(*v*) section 268 (aggravated assault);

(*w*) section 269 (unlawfully causing bodily harm);

(*x*) section 270 (assaulting a peace officer);

(*y*) section 271 (sexual assault);

(*z*) section 272 (sexual assault with a weapon, threats to a third party or causing bodily harm);

(*z.1*) section 273 (aggravated sexual assault);

(*z.2*) section 279 (kidnapping);

(*z.21*) section 279.1 (hostage taking);

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(*z.3*) section 344 (robbery);

(*z.31*) subsection 430(2) (mischief that causes actual danger to life);

(*z.32*) section 431 (attack on premises, residence or transport of internationally protected person);

(*z.33*) section 431.1 (attack on premises, accommodation or transport of United Nations or associated personnel);

(*z.34*) subsection 431.2(2) (explosive or other lethal device);

(*z.4*) section 433 (arson — disregard for human life);

(*z.5*) section 434.1 (arson — own property);

(*z.6*) section 436 (arson by negligence); and

(*z.7*) paragraph 465(1)(*a*) (conspiracy to commit murder).

PROPOSED SECTION

103. (1) Paragraph 1(*a*) of Schedule I to the Act is replaced by the following:

(**a**) sections 46 and 47 (high treason);

(**a**.01) section 75 (piratical acts);

(2) Section 1 of Schedule I to the Act is amended by adding the following after paragraph (*a.5*):

(*a.6*) section 83.18 (participation in activity of terrorist group);

(*a.7*) section 83.19 (facilitating terrorist activity);

(*a.8*) section 83.2 (commission of offence for terrorist group);

(*a.9*) section 83.21 (instructing to carry out activity for terrorist group);

(*a.91*) section 83.22 (instructing to carry out terrorist activity);

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(3) Paragraph 1(*c*) of Schedule I to the Act is replaced by the following:

(*c*) section 87 (pointing a firearm);

(*c*.1) section 98 (breaking and entering to steal firearm);

(*c*.2) section 98.1 (robbery to steal firearm);

(4) Section 1 of Schedule I to the Act is amended by adding the following after paragraph (*g*):

(*g*.1) section 153.1 (sexual exploitation of person with disability);

(5) Section 1 of Schedule I to the Act is amended by adding the following after paragraph (*j*):

(*j*.1) section 163.1 (child pornography);

(6) Section 1 of Schedule I to the Act is amended by adding the following after paragraph (*m*):

(*m*.1) section 172.1 (luring a child);

(7) Section 1 of Schedule I to the Act is amended by adding the following after paragraph (*n*):

(*n*.1) subsection 212(2.1) (aggravated offence in relation to living on the avails of prostitution of a person under the age of 18 years);

(8) Section 1 of Schedule I to the Act is amended by adding the following after paragraph (*r*):

(*r*.1) section 244.1 (causing bodily harm with intent — air gun or pistol);

(*r*.2) section 244.2 (discharging firearm — recklessness);

(*r*.3) section 245 (administering noxious thing);

(9) Section 1 of Schedule I to the Act is amended by adding the following after paragraph (*s*):

(*s*.01) section 247 (traps likely to cause bodily harm);

(*s*.02) section 248 (interfering with transportation facilities);

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(10) Section 1 of Schedule I to the Act is amended by adding the following after paragraph (s.1):

(*s*.11) subsections 249.1(3) and (4) (flight causing bodily harm or death);

(*s*.12) section 249.2 (causing death by criminal negligence (street racing));

(*s*.13) section 249.3 (causing bodily harm by criminal negligence (street racing));

(*s*.14) section 249.4 (dangerous operation of motor vehicle while street racing);

(11) Section 1 of Schedule I to the Act is amended by adding the following after paragraph (*s*.3):

(*s*.4) section 264.1 (uttering threats);

(12) Section 1 of Schedule I to the Act is amended by adding the following after paragraph (*w*):

(*w*.1) section 269.1 (torture);

(13) Section 1 of Schedule I to the Act is amended by adding the following after paragraph (*x*):

(*x*.1) section 270.01 (assaulting peace officer with weapon or causing bodily harm);

(*x*.2) section 270.02 (aggravated assault of peace officer);

(14) Section 1 of Schedule I to the Act is amended by adding the following after paragraph (*z*.1):

(*z*.11) section 273.3 (removal of child from Canada);

(15) Paragraph 1(*z*.2) of Schedule I to the English version of the Act is replaced by the following:

(*z*.2) section 279 (kidnapping <u>and forcible confinement</u>);

(16) Paragraph 1(z.3) of Schedule I to the Act is replaced by the following:

(*z*.3) <u>sections 343 and</u> 344 (robbery);

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(z.301) section 346 (extortion);

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 103

SUBJECT AND EFFECT

Clause 103 amends and replaces offences from the *Criminal Code* in Schedule I of the Act.

REASON FOR CHANGE

Subclause (1) adds sections 46 and 47 of the *Criminal Code* to the list of Schedule I offences.

Subclause (2) adds sections 83.18, 83.19, 83.2, 83.21 and 83.22 of the *Criminal Code* to the list of Schedule I offences.

Subclause (3) adds section 153.1 (sexual exploitation of a person with a disability) to the list of Schedule I offences.

Subclause (4) adds section 163.1 of the *Criminal Code* (child pornography) to the list of Schedule I offences.

Subclause (5) adds section 172.1 of the *Criminal Code* (luring a child) to the list of Schedule I offences.

Subclause (6) adds subsection 212(2.1) of the *Criminal Code* (aggravated offence in relation to living on the avails of prostitution of a person under the age of 18 years) to the list of Schedule I offences.

Subclause (7) adds section 244.1 of the *Criminal Code* (causing bodily harm with intent – air gun or pistol) to the list of Schedule I offences.

Subclause (8) adds section 245 of the *Criminal Code* (administering noxious thing) to the list of Schedule I offences.

Subclause (9) adds section 247 of the *Criminal Code* (traps likely to cause bodily harm) to the list of Schedule I offences.

Subclause (10) adds section 248 of the *Criminal Code* (interfering with transportation facilities) to the list of Schedule I offences.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

Subclause (11) adds subsections:

- 249.1(3) and (4) of the *Criminal Code* (flight causing bodily harm or death) to the list of Schedule I offences;

- 249.2 of the *Criminal Code* (causing death by criminal negligence (street racing)) to the list of Schedule I offences;

- 249.3 of the *Criminal* Code (causing bodily harm by criminal negligence (street racing)) to the list of Schedule I offences;

- 249.4 of the *Criminal Code* (dangerous operation of a motor vehicle while street racing) to the list of Schedule I offences.

Subclause (12) adds section 264.1 of the *Criminal Code* (uttering threats) to the list of Schedule I offences.

Subclause (13) adds section 269.1 of the *Criminal Code* (torture) to the list of Schedule I offences.

Subclause (14) adds section 273.3 of the *Criminal Code* (removal of a child from Canada) to the list of Schedule I offences.

Subclause (15) ensures that the offence of forcible confinement, which is in subsection 279(2) of the *Criminal Code*, is clearly set out in Schedule I with the offence of kidnapping (subsection 279(1)).

Subclause (16) adds section 343 (robbery) to the list of Schedule I offences – currently includes only section 344 (robbery); Adds section 346 (extortion) to the list of Schedule I offences.

RELATED CLAUSES

Clause 104 and 160

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 104

PRESENT SUBSECTION

Not applicable

PROPOSED SECTION

104. Schedule I to the Act is amended by adding the following after section 5:

5.1 If prosecuted by way of indictment, the offence of pointing a firearm, as provided for by subsection 86(1) of the *Criminal Code*, as it read immediately before December 1, 1998.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 104

SUBJECT AND EFFECT

This clause adds section 5.1 to Schedule I to include the offence that was prosecuted by indictment under section 86(1) (pointing a firearm) of the *Criminal Code* as it read before December 1, 1998.

REASON FOR CHANGE

This technical amendment is consequential to amendment proposed in sub-clause 55(3).

RELATED CLAUSE

Clause 55(3) and 103

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 105

PRESENT SECTION

Not applicable

PROPOSED SECTION

105. Subsection 127(5.1) of the Corrections and Conditional Release Act, as enacted by section 81, applies only in respect of an offender who is on parole or statutory release and who receives an additional sentence for an offence under an Act of Parliament on or after the day on which this section comes into force.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 105

SUBJECT AND EFFECT

Transitory provision with respect to Statutory Release Date when an additional sentence imposed and parole or statutory release not revoked.

REASON FOR CHANGE

Since the automatic revocation of offenders receiving an additional sentence while on parole or statutory release has been declared to be unconstitutional and therefore of no force and effect in the case of *Illes v Kent Institution* (2001), 160 *C.C.C.* (3d) 307 (B.C.S.C.), subsection 127(5.1) has been added to the Act to set out the sentence calculation rule where an offender on parole or statutory release receives an additional sentence and the release is not revoked.

An offender on parole or statutory release that has not been revoked and who has received an additional sentence on or after the day of coming into force of this Act would serve any portion that remains to be served until the statutory release date on the current sentence plus 2/3 of any additional sentence.

RELATED CLAUSE

Clause 81

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 106

PRESENT SECTION

Not applicable

PROPOSED SECTION

106. Subparagraph 129(2)(*a*)(ii) of the *Corrections and Conditional Release Act* and subparagraph (*a*)(iv.1) of the definition "sexual offence involving a child" in subsection 129(9) of that Act, as enacted by section 84, apply in respect of an offender who is sentenced in respect of an offence referred to in either subparagraph, even if they were sentenced, committed or transferred to a penitentiary before the day on which this section comes into force.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 106

SUBJECT AND EFFECT

A transitional provision which states that the amended subparagraph 129(2)(*a*)(ii) and the new subparagraph 129(*a*)(iv.1) apply even if the offender was sentenced, committed or transferred to a penitentiary before the day on which this section comes into force.

REASON FOR CHANGE

This transitional provision states that the amended subparagraph 129(1)(*a*)(ii) which now includes an "offence causing death or serious harm" and the new subparagraph 129(*a*)(iv.1) which adds child pornography (s.163.1 of the *Criminal Code*) to the definition of "sexual offence involving a child" as grounds for referring an offender for detention review by the Board apply even if the offender was sentenced, committed, or transferred, to a penitentiary **before** the day on which this section comes into force.

RELATED CLAUSE

Clause 84

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 107

PRESENT SECTION

Not applicable

PROPOSED SECTION

107. Subsections 135(1.1) to (3.1), (6.2) to (6.4), (9.1) and (9.2) of the *Corrections and Conditional Release Act*, as enacted or amended by section 89, apply only in respect of an offender who receives an additional sentence on or after the day on which this section comes into force.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

SUBJECT AND EFFECT

This transitional provision that states that the automatic suspension scheme applies on or after the coming into force of this section to an offender who receives an additional sentence on or after the day on which this section comes into force.

REASON FOR CHANGE

This clause provides that the provisions of this Act with respect to the scheme for automatic suspension of parole or statutory release upon the imposition of an additional sentence will apply to an offender who receives the additional sentence on or after the day the Act comes into force.

RELATED CLAUSE

Clause 89

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 108

PRESENT SUBSECTION

An Act to provide for the relief of persons who have been convicted of offences and have subsequently rehabilitated themselves

PROPOSED SECTION

CRIMINAL RECORDS ACT

108. The long title of the *Criminal Records Act* is replaced by the following:

An Act to provide for the <u>suspension of the records</u> of persons who have been convicted of offences and subsequently rehabilitated themselves

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 108

SUBJECT AND EFFECT

The proposed section reflects the amended long title of the *Criminal Records Act.*

REASON FOR CHANGE

The amended long title reflects the new record suspension process, emphasizing that the proposed amendments to the *Criminal Records Act* will provide for the *suspension of the records of persons* who have been convicted of offences and have subsequently rehabilitated themselves (replacing "for the relief of persons").

RELATED CLAUSE

None

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 109

PRESENT SECTION

2. (1) In this Act,

"pardon" means a pardon granted by the Board under section 4.1

PROPOSED SECTION

109. (1) The definition "pardon" in subsection 2(1) of the Act is repealed.

(2) Subsection 2(1) of the Act is amended by adding the following in alphabetical order:

"child" means a person who is less than 18 years of age.

"Executive Committee" means the Executive Committee of the Board referred to in subsection 151(1) of the *Corrections and Conditional Release Act*.

"record suspension" means a measure ordered by the Board under section 4.1.

"service offence" has the same meaning as in subsection 2(1) of the *National Defence Act*.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 109

SUBJECT AND EFFECT

The term pardon is repealed in the *Criminal Records Act* as it no longer applies in the proposed legislation.

Adds four new definitions for the interpretation of the legislation: "child", "Executive Committee", record suspension, and "service offence".

REASON FOR CHANGE

This Clause reflects the change in language from pardon to record suspension and provides updated definitions based on changes proposed by this legislation.

RELATED CLAUSES

Clauses 110, 111, 112, 113, 114, 115, 117, 118, 120, 121, 122, 123, 124, 125, 126, 127, 128, 130, 137, 138, 141, 142, 143, 144, 145, 146, 148, 149, 150, 152, 153, 156, 157, 158 and 159

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 110

PRESENT SECTION

2.1 The Board has exclusive jurisdiction to grant or refuse to grant or to revoke a pardon.

PROPOSED SECTION

110. Section 2.1 of the Act is replaced by the following:

2.1 The Board has exclusive jurisdiction and absolute discretion to order, refuse to order or revoke a record suspension.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 110

SUBJECT AND EFFECT

Expands the jurisdiction of the National Parole Board to ensure that they have absolute discretion to order, refuse or revoke a record suspension, in considering applications.

REASON FOR CHANGE

To clarify the role of the National Parole Board and their jurisdiction to order, refuse of revoke a record suspension.

RELATED CLAUSES

Clauses 109 and 111

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 111

PRESENT SUBSECTION

2.2 (1) Applications for pardons referred to in subsection 4.1(1) shall be determined, and decisions whether to revoke pardons under section 7 shall be made, by a panel that consists of one member of the Board.

(2) The Chairman of the Board may direct that the number of members of the Board required to constitute a panel for the determination of an application for a pardon referred to in subsection 4.1(1) or to decide whether to revoke a pardon under section 7 or for the determination of any class of those applications or for the making of any class of those decisions shall be greater than one.

PROPOSED SECTION

111. (1) Subsection 2.2(1) of the Act is replaced by the following:

2.2 (1) An application for a record suspension shall be determined, and a decision whether to revoke a record suspension under section 7 shall be made, by a panel that consists of one member of the Board.

(2) Subsection 2.2(2) of the English version of the Act is replaced by the following:

(2) The Chairperson of the Board may direct that the number of members of the Board required to constitute a panel to determine an application for a record suspension, to decide whether to revoke a record suspension under section 7 or to determine any class of those applications or make any class of those decisions shall be greater than one.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 111

SUBJECT AND EFFECT

111(1) amends subsection 2.2(1) of the Act to modify the language to reflect the change from pardon to record suspension.

111(2) amends subsection 2.2(2) of the English version of the Act to reflect new language of record suspension and the expanded authority of the National Parole Board in considering an application from an offender for a record suspension.

REASON FOR CHANGE

These modifications are necessary to update the language in the Act and the expanded jurisdiction of the National Parole Board.

RELATED CLAUSES

Clauses 109 and 110

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 112

PRESENT SECTION

Not applicable

PROPOSED SECTION

112. The Act is amended by adding the following after section 2.2:

EFFECT OF RECORD SUSPENSION

2.3 A record suspension

(*a*) is evidence of the fact that

(i) the Board, after making inquiries, was satisfied that the applicant was of good conduct, and

(ii) the conviction in respect of which the record suspension is ordered should no longer reflect adversely on the applicant's character; and

(*b*) unless the record suspension is subsequently revoked or ceases to have effect, requires that the judicial record of the conviction be kept separate and apart from other criminal records and removes any disqualification or obligation to which the applicant is, by reason of the conviction, subject under any Act of Parliament — other than section 109, 110, 161, 259, 490.012, 490.019 or 490.02901 of the *Criminal Code*, subsection 147.1(1) or section 227.01 or 227.06 of the *National Defence Act* or section 36.1 of the *International Transfer of Offenders Act*.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 112

SUBJECT AND EFFECT

Amends the language from "Effects of Pardon" to the "Effects of Record Suspension".

REASON FOR CHANGE

To reflect the change in language from pardon to record suspension.

RELATED CLAUSE

Clause 109

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 113

PRESENT SECTION

APPLICATION FOR PARDON

PROPOSED SECTION

113. The heading before section 3 of the Act is replaced by the following:

APPLICATION FOR RECORD SUSPENSION

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CLAUSE 113

SUBJECT AND EFFECT

Amends the heading to reflect the new record suspension application process.

REASON FOR CHANGE

To reflect the change in language from pardon to record suspension.

RELATED CLAUSES

Clauses 109,114 and 115

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 114

PRESENT SECTION

3. (1) A person who has been convicted of an offence under an Act of Parliament or a regulation made under an Act of Parliament may apply to the Board for a pardon in respect of that offence and a Canadian offender within the meaning of the *International Transfer of Offenders Act"* who has been transferred to Canada under that Act may apply to the Board for a pardon in respect of the offence of which the offender has been found guilty.

PROPOSED SECTION

114. Subsection 3(1) of the Act is replaced by the following:

3. (1) Subject to section 4, a person who has been convicted of an offence under an Act of Parliament may apply to the Board for a record suspension in respect of that offence, and a Canadian offender, within the meaning of the *International Transfer of Offenders Act*, who has been transferred to Canada under that Act may apply to the Board for a record suspension in respect of the offence of which he or she has been found guilty.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 114

SUBJECT AND EFFECT

Provision establishes that a person who is applying for a record suspension will be subject to new criteria, as outlined in section 4 of the proposed legislation.

REASON FOR CHANGE

This provision will introduce new application eligibility periods, (e.g., five years for a summary conviction) and will introduce new ineligibility criteria for a record suspension.

RELATED CLAUSES

Clauses 109, and 115

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 115

PRESENT SECTION

4. A person is ineligible to apply for a pardon until the following period has elapsed after the expiration according to law of any sentence, including a sentence of imprisonment, a period of probation and the payment of any fine, imposed for an offence:

(*a*) 10 years, in the case of a serious personal injury offence within the meaning of section 752 of the *Criminal Code*, including manslaughter, for which the applicant was sentenced to imprisonment for a period of two years or more or an offence referred to in Schedule 1 that was prosecuted by indictment, or five years in the case of any other offence prosecuted by indictment, an offence referred to in Schedule 1 that is punishable on summary conviction or an offence that is a service offence within the meaning of the *National Defence Act* for which the offender was punished by a fine of more than two thousand dollars, detention for more than six months, dismissal from Her Majesty's service, imprisonment for more than six months or a punishment that is greater than imprisonment for less than two years in the scale of punishments set out in subsection 139(1) of that Act; or

(*b*) three years, in the case of an offence, other than one referred to in paragraph (*a*), that is punishable on summary conviction or that is a service offence within the meaning of the *National Defence Act*.

4.01 The period during which a person is being supervised pursuant to an order for long-term supervision, within the meaning of subsection 2(1) of the *Corrections and Conditional Release Act* is not included in the calculation of the period referred to in section 4 that must have elapsed after the expiration of sentence before an application for a pardon is considered.

PROPOSED SECTION

115. Sections 4 and 4.01 of the Act are replaced by the following:

4. (1) A person is ineligible to apply for a record suspension until the following period has elapsed after the expiration according to law of any sentence, including a sentence of imprisonment, a period of probation and the payment of any fine, imposed for an offence:

(*a*) 10 years, in the case of an offence that is prosecuted by indictment or is a service offence for which the offender was punished by a fine of more than five

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Divulgé(s) en vertu de la Loi sur l'accès à l'information.

thousand dollars, detention for more than six months, dismissal from Her Majesty's service, imprisonment for more than six months or a punishment that is greater than imprisonment for less than two years in the scale of punishments set out in subsection 139(1) of the *National Defence Act*; or

(*b*) five years, in the case of an offence that is punishable on summary conviction or is a service offence other than a service offence referred to in paragraph *(a)*.

(2) Subject to subsection (3), a person is ineligible to apply for a record suspension if he or she has been convicted of

(*a*) an offence referred to in Schedule 1;or

(*b*) more than three offences each of which either was prosecuted by indictment or is a service offence that is subject to a maximum punishment of imprisonment for life, and for each of which the person was sentenced to imprisonment for two years or more.

(3) A person who has been convicted of an offence referred to in Schedule 1 may apply for a record suspension if the Board is satisfied that

(*a*) the person was not in a position of trust or authority towards the victim of the offence and the victim was not in a relationship of dependency with him or her;

(*b*) the person did not use, threaten to use or attempt to use violence, intimidation or coercion in relation to the victim; and

(*c*) the person was less than five years older than the victim.

(4) The person has the onus of satisfying the Board that the conditions referred to in subsection (3) are met.

(5) The Governor in Council may, by order, amend Schedule 1 by adding or deleting a reference to an offence.

4.01 The period during which a person is supervised under an order for long-term supervision, within the meaning of subsection 2(1) of the *Corrections and Conditional Release Act*, is not included in the calculation of the period referred to in subsection 4(1).

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 115

SUBJECT AND EFFECT

Paragraph 4(1)(a) sets the ineligibility period to apply for a record suspension in the case of an indictable offence, or equivalent offence under the *National Defence Act,* at 10 years.

Currently the ineligibility periods are:

- 10 years in the case of a serious personal injury offence, including manslaughter, for which the applicant was sentenced to imprisonment for a period of two years or more or an offence in Schedule 1 that was prosecuted by indictment;

- 5 years for any other case prosecuted by indictment, or an offence in Schedule 1 prosecuted by summary conviction or an equivalent offence under the *National Defence Act;* and

- 3 years for all other summary conviction offences and equivalent offences under the *National Defence Act.*

Paragraph (1)(b) sets the ineligibility period to apply for a record suspension to five years in the case of a summary conviction offence, or equivalent offence under the *National Defence Act*, at five years.

Subsection 4(2) establishes ineligibility criteria for a record suspension as follows:

(a) a person convicted of sexual activity relating to a minor, as set out in Schedule 1 of the legislation would be ineligible to make an application; and

(b) a person with more than three (3) offences prosecuted by indictment, (with each offence receiving a sentence of two years or more) or applicable service offences, (with each offence receiving a sentence of two years or more), would be ineligible to make an application.

Subsection 4(3) establishes conditions where exceptions may be made to allow a person to apply for a record suspension in cases which would normally be ineligible. The applicant has the onus of satisfying the Board that:

(a) the offence involving sexual activity relating to a minor did not involve a position of trust/authority, and the victim was not in a dependent relationship with them.

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(b) They did not use of threaten to use violence/intimidation or coercion in relation to the victim.

(c) They were "close in age" to the victim (less than five years older than the victim).

Under subsection 4(4) the applicant has the onus of satisfying the National Parole Board that the conditions in subsection (3) are met.

Section 4.01 is a technical amendment to reflect the re-numbering of subsection 4(1).

REASON FOR CHANGE

These legislative amendments were originally contained in former Bill C-23 which was split into two bills – former Bill C-23A (*Limiting Pardons for Serious Crimes Act*) and former Bill C-23B (*Eliminating Pardons for Serious Crimes Act*). Former Bill C-23 proposed changes to the ineligibility periods for both summary (5 years) and indictable (10 years) offences. A modified version of these changes were reflected in the passage of the *Limiting Pardons for Serious Crimes Act*, while the original scheme was contained in former Bill C-23B and is reflected in this section.

RELATED CLAUSES

Clauses 109 and 114

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 116

PRESENT SUBSECTION

4.1 (1) The Board may grant a pardon for an offence if the Board is satisfied that

(*a*) the applicant, during the applicable period referred to in section 4, has been of good conduct and has not been convicted of an offence under an Act of Parliament; and

(*b*) in the case of an offence referred to in paragraph 4(*a*), granting the pardon at that time would provide a measurable benefit to the applicant, would sustain his or her rehabilitation in society as a law-abiding citizen and would not bring the administration of justice into disrepute.

(2) In the case of an offence referred to in paragraph 4(*a*), the applicant has the onus of satisfying the Board that the pardon would provide a measurable benefit to the applicant and would sustain his or her rehabilitation in society as a law-abiding citizen.

PROPOSED SECTION

116. (1) Subsections 4.1(1) and (2) of the Act are replaced by the following:

4.1 (1) The Board may order that an applicant's record in respect of an offence be suspended if the Board is satisfied that

(*a*) the applicant, during the applicable period referred to in subsection 4(1), has been of good conduct and has not been convicted of an offence under an Act of Parliament; and

(*b*) in the case of an offence referred to in paragraph 4(1)(*a*), ordering the record suspension at that time would provide a measurable benefit to the applicant, would sustain his or her rehabilitation in society as a law-abiding citizen and would not bring the administration of justice into disrepute.

(2) In the case of an offence referred to in paragraph 4(1)(*a*), the applicant has the onus of satisfying the Board that the record suspension would provide a measurable benefit to the applicant and would sustain his or her rehabilitation in society as a law-abiding citizen.

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(2) The portion of subsection 4.1(3) of the Act before paragraph (*a*) is replaced by the following:

(3) In determining whether granting the pardon would bring the administration of justice into disrepute, the Board may consider

(3) Paragraph 4.1(3)(*c*) of the Act is replaced by the following:

(3)(*c*) information relating to the applicant's criminal history and, in the case of a service offence within the meaning of the *National Defence Act*, to any service offence history of the applicant that is relevant to the application; and

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CLAUSE 116

SUBJECT AND EFFECT

Subsection 4.1(1) amends the language to reflect the change from a pardon process to a record suspensions process, as follows:

Paragraph 4.1(1)(a) affirms that the National Parole Board "may order that an applicant's record in respect of an offence be suspended" (replacing "may grant a pardon"), if it is satisfied that the applicant has been of good conduct during the applicable waiting period. A technical amendment is made to change "section 4" to "subsection 4(1)", due to renumbering of the provisions.

Paragraph 4.1(1)(b) affirms that, in "ordering the record suspension (replacing "granting the pardon"), the National Parole Board is satisfied that it would provide the applicant with a measurable benefit, would sustain his or her rehabilitation in society as a law-abiding citizen and not bring the administration of justice into disrepute. A technical amendment was made to change "paragraph 4(a)" to "paragraph 4(1)(a), due to renumbering of the provisions.

Subsection 4.1(2) amends the language to reflect the change from a pardon process to a record suspension process, and affirms that the applicant has the onus of satisfying the National Parole Board that the record suspension (replacing "the pardon") would provide them with a measurable benefit and sustain his or her rehabilitation in society as a law-abiding citizen. A technical amendment was made to change "paragraph 4(a)" to "paragraph 4(1)(a), due to renumbering of the provisions.

Subsection 4.1(3) amends the language to reflect the change from a pardon process to a record suspension process, and outlines that the Board may consider the factors outlined in the *Criminal Records Act*, in determining whether ordering a record suspension would bring the administration of justice into disrepute.

Paragraph 4.1(3)(c) amends the language to remove a reference to the *National Defence Act* as it is redundant given the inclusion of the definition of "service offence".

REASON FOR CHANGE

These amendments update the language to reflect the change from pardon process to a record suspension process, as well as to reflect the Board's jurisdiction in terms of its ability to order a record suspension as opposed to grant

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a pardon. Finally, the language was also amended to remove a redundant reference.

RELATED CLAUSES

Clauses 109 and 110

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CLAUSE 117

PRESENT SECTION

4.2 (1) On receipt of an application for a pardon, the Board

(*a*) shall cause inquiries to be made to ascertain the applicant's conduct since the date of the conviction; and

(*b*) may, in the case of an offence referred to in paragraph 4(*a*), cause inquiries to be made with respect to any factors that it may consider in determining whether granting the pardon would bring the administration of justice into disrepute.

(2) If the Board proposes to refuse to grant a pardon, it shall notify in writing the applicant of its proposal and advise the applicant that he or she is entitled to make, or have made on his or her behalf, any representations to the Board that he or she believes relevant either in writing or, with the Board's authorization, orally at a hearing held for that purpose.

(4) An applicant whose application is refused may not apply for a pardon until the expiration of one year after the date of the refusal.

PROPOSED SECTION

117. (1) Subsections 4.2(1) and (2) of the Act are replaced by the following:

4.2 (1) On receipt of an application for a record suspension, the Board

(*a*) shall cause inquiries to be made to ascertain whether the applicant is eligible to make the application;

(*b*) if the applicant is eligible, shall cause inquiries to be made to ascertain the applicant's conduct since the date of the conviction; and

(*c*) may, in the case of an offence referred to in paragraph 4(1)(*a*), cause inquiries to be made with respect to any factors that it may consider in determining whether ordering the record suspension would bring the administration of justice into disrepute.

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(2) If the Board proposes to refuse to order a record suspension, it shall notify in writing the applicant of its proposal and advise the applicant that he or she is entitled to make, or have made on his or her behalf, any representations to

the Board that he or she believes relevant either in writing or, with the Board's authorization, orally at a hearing held for that purpose.

(2) Subsection 4.2(4) of the Act is replaced by the following:

(4) An applicant may not re-apply for a record suspension until the expiration of one year after the day on which the Board refuses to order a record suspension.

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CLAUSE 117

SUBJECT AND EFFECT

Subsection 4.2(1) amends the language such that the National Parole Board has the authority to make inquiries on "an application for a record suspension" (replacing "an application for a pardon").

In keeping with the proposed new ineligibility criteria, this subsection 4.2(1)(a) would allow the Board to make inquiries to confirm the applicant's eligibility for a record suspension.

Subsection 4.2(1)(b) adds the condition that the applicant must be eligible for a record suspension before inquiries can be made to ascertain the applicant's conduct.

Subsection 4.2(1)(c) amends the language to reflect the change from a pardon process to a record suspension process: "determining whether ordering the record suspension" replaces "determining whether granting the pardon". A technical amendment was made to change "paragraph 4(a)" to "paragraph 4(1)(a), due to renumbering of the provisions.

Subsection 4.2(2) amends the language to reflect the change from a pardon process to a record suspension process: "ordering the record suspension" replaces "granting the pardon.

Subsection 4.2(4) amends language: "May not re-apply for a record suspension" replaces "may not apply for a pardon" for further clarity in the provision, in addition to reflecting the change from a pardon process to a record suspension process.

REASON FOR CHANGE

Subsection 4.2(1) reflects the change in language from pardon to record suspension.

Subsection 4.2(1)(a) allows the Board to confirm whether the applicant is eligible based on the new ineligibility criteria.

Subsection 4.2(1)(b) requires the Board must first confirm that the applicant can apply for a record suspension prior to making inquiries regarding the applicant's conduct.

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Subsection 4.2(1)(c) reflects the change in language from pardon to record suspension.

Subsection 4.2(2) reflects the change in language from pardon to record suspension.

Subsection 4.2(4) clarifies that if an individual's application is refused, that person must wait for a year prior to submitting another application. Other changes in this section reflect the changes in language from pardon to record suspension.

RELATED CLAUSES

Clauses 109, 110 and 115

Released under the Access to Information Act /
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CLAUSE 118

PRESENT SECTION

Not applicable

PROPOSED SECTION

118. The Act is amended by adding the following after section 4.3:

4.4 The Executive Committee shall, after the consultation with Board members that it considers appropriate, adopt policies relating to applications for record suspensions, including related inquiries and proceedings.

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CLAUSE 118

SUBJECT AND EFFECT

This is a new provision that would require the National Parole Board to adopt policies regarding record suspension applications, related inquiries and proceedings.

REASON FOR CHANGE

With the new criteria introduced by the legislative amendments, this provision provides the National Parole Board with the authority to implement policies regarding applications, inquiries and proceedings.

RELATED CLAUSE

Clause 109

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 119

PRESENT SECTION

5. The pardon:

(*a*) is evidence of the fact that:

(i) the Board, after making inquiries, was satisfied that the applicant for the pardon was of good conduct, and

(ii) the conviction in respect of which the pardon is granted should no longer reflect adversely on the applicant's character; and

(*b*) unless the pardon is subsequently revoked or ceases to have effect, requires the judicial record of the conviction to be kept separate and apart from other criminal records and removes any disqualification or obligation to which the person so convicted is, by reason of the conviction, subject by virtue of the provisions of any Act of Parliament — other than section 109, 110, 161, 259, 490.012, 490.019 or 490.02901 of the *Criminal Code*, subsection 147.1(1) or section 227.01 or 227.06 of the *National Defence Act* or section 36.1 of the *International Transfer of Offenders Act* — or of a regulation made under an Act of Parliament.

PROPOSED SECTION

119. Section 5 of the Act and the heading before it are repealed.

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CLAUSE 119

SUBJECT AND EFFECT

This amendment repeals the existing section 5 ("Effect of Pardon") of the *Criminal Records Act*. Clause 112 (new section 2.3) sets out the new provisions regarding the effect of record suspension.

REASON FOR CHANGE

Section 5 of the *Criminal Records Act* would be repealed as it has been replaced by the new section 2.3 proposed by these amendments.

RELATED CLAUSE

Clause 112

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 120

PRESENT SECTION

6. (1) The Minister may, by order in writing addressed to any person having the custody or control of any judicial record of a conviction in respect of which a pardon has been granted, require that person to deliver that record into the custody of the Commissioner.

(2) Any record of a conviction in respect of which a pardon has been granted that is in the custody of the Commissioner or of any department or agency of the Government of Canada shall be kept separate and apart from other criminal records, and no such record shall be disclosed to any person, nor shall the existence of the record or the fact of the conviction be disclosed to any person, without the prior approval of the Minister.

PROPOSED SECTION

120. Subsections 6(1) and (2) of the Act are replaced by the following:

6. (1) The Minister may, by order in writing addressed to a person having the custody or control of a judicial record of a conviction in respect of which a record suspension has been ordered, require that person to deliver that record into the Commissioner's custody.

(2) A record of a conviction in respect of which a record suspension has been ordered that is in the custody of the Commissioner or of any department or agency of the Government of Canada shall be kept separate and apart from other criminal records. No such record shall be disclosed to any person, nor shall the existence of the record or the fact of the conviction be disclosed to any person, without the prior approval of the Minister.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 120

SUBJECT AND EFFECT

Subsections 6(1) and (2) amend language from pardon to record suspension in terms of the "records to be delivered to Commissioner" and "Records to be kept separate and not to be disclosed."

REASON FOR CHANGE

This amendment reflects the change in language from pardon to record suspension.

RELATED CLAUSES

Clauses 109, 121 and 122

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 121

PRESENT SECTION

6.2 Notwithstanding sections 6 and 6.1, the name, date of birth and last known address of a person who has received a pardon or a discharge referred to in section 6.1 may be disclosed to a police force if a fingerprint, identified as that of the person, is found.

PROPOSED SECTION

121. The portion of section 6.2 of the Act before paragraph (*a*) is replaced by the following:

6.2 Despite sections 6 and 6.1, the name, date of birth and last known address of a person whose record is suspended under section 4.1 or who has received a discharge referred to in section 6.1 may be disclosed to a police force if a fingerprint, identified as that of the person, is found.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 121

SUBJECT AND EFFECT

The section has been amended to change the language from "who has received a pardon" to "whose record is suspended." In addition, a technical amendment has been made to correspond to the renumbering of section 6.1 to 4.1.

REASON FOR CHANGE

This amendment reflects the change in language from pardon to record suspension.

RELATED CLAUSES

Clauses 109 and 120

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CLAUSE 122

PRESENT SECTION

6.3 (1) The definitions in this subsection apply in this section.

"children" means persons who are less than 18 years of age.

"vulnerable persons" means persons who, because of their age, a disability or other circumstances, whether temporary or permanent,

(*a*) are in a position of dependence on others; or

(*b*) are otherwise at a greater risk than the general population of being harmed by persons in a position of authority or trust relative to them.

(2) The Commissioner shall make, in the automated criminal conviction records retrieval system maintained by the Royal Canadian Mounted Police, a notation enabling a member of a police force or other authorized body to determine whether there is a record of an individual's conviction for an offence listed in Schedule 2 in respect of which a pardon has been granted.

(3) At the request of any person or organization responsible for the well-being of one or more children or vulnerable persons and to whom or to which an application is made for a paid or volunteer position, a member of a police force or other authorized body shall verify whether the applicant is the subject of a notation made in accordance with subsection (2) if

(*a*) the position is one of authority or trust relative to those children or vulnerable persons; and

(*b*) the applicant has consented in writing to the verification.

(9) The Governor in Council may, by order, amend Schedule 1 or 2 by adding or deleting a reference to an offence.

PROPOSED SECTION

122. (1) Subsections 6.3(1) to (3) of the Act are replaced by the following:

6.3 (1) In this section, "vulnerable person" means a person who, because of his or her age, a disability or other circumstances, whether temporary or permanent,

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(*a*) is in a position of dependency on others; or

(*b*) is otherwise at a greater risk than the general population of being harmed by a person in a position of trust or authority towards them.

(2) The Commissioner shall make, in the automated criminal conviction records retrieval system maintained by the Royal Canadian Mounted Police, a notation enabling a member of a police force or other authorized body to determine whether there is a record of an individual's conviction for an offence listed in Schedule 2 in respect of which a record suspension has been ordered.

(3) At the request of any person or organization responsible for the well-being of a child or vulnerable person and to whom or to which an application is made for a paid or volunteer position, a member of a police force or other authorized body shall verify whether the applicant is the subject of a notation made in accordance with subsection (2) if

(*a*) the position is one of trust or authority towards that child or vulnerable person; and

(*b*) the applicant has consented in writing to the verification.

(2) Subsection 6.3(9) of the Act is replaced by the following:

(9) The Governor in Council may, by order, amend Schedule 2 by adding or deleting a reference to an offence.

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Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 122

SUBJECT AND EFFECT

Subsections 6.3(1), (2) and (3), are technical amendments to various language (e.g., "his or her age" replaces "their age"; and "is in a position" replaces "are in a position") for further clarity and to reflect new language from pardon to record suspension.

Subsection 6.3(9), is a consequential amendment to schedule numbers.

REASON FOR CHANGE

Subsections 6.3(1), (2) and (3), update language to reflect the change from pardon to record suspension, and various other language changes for additional clarity.

Subsection 6.3(9), is a consequential amendment to schedule numbers.

RELATED CLAUSES

Clauses 109, 120 and 134

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 123

PRESENT SECTION

6.4 Section 6.3 applies in respect of a record of a conviction for any offence in respect of which a pardon has been granted regardless of the date of the conviction or the date of the pardon.

PROPOSED SECTION

123. Section 6.4 of the Act is replaced by the following:

6.4 Section 6.3 applies in respect of a record of a conviction for any offence in respect of which a record suspension has been ordered regardless of the date of the conviction.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 123

SUBJECT AND EFFECT

This Clause amends the language from pardon to record suspension.

REASON FOR CHANGE

The amendment reflects the change in language from pardon to record suspension.

RELATED CLAUSES

Clauses 109 and 122

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 124

PRESENT SECTION

7. A pardon may be revoked by the Board

(*a*) if the person to whom it is granted is subsequently convicted of an offence punishable on summary conviction under an Act of Parliament or a regulation made under an Act of Parliament;

(*b*) on evidence establishing to the satisfaction of the Board that the person to whom it was granted is no longer of good conduct; or

(*c*) on evidence establishing to the satisfaction of the Board that the person to whom it was granted knowingly made a false or deceptive statement in relation to the application for the pardon, or knowingly concealed some material particular in relation to that application.

PROPOSED SECTION

124. Section 7 of the Act is replaced by the following:

7. A record suspension may be revoked by the Board

(*a*) if the person to whom it relates is subsequently convicted of an offence referred to in paragraph 4(1)(*b*), other than an offence referred to in subparagraph 7.2(*a*)(ii);

(*b*) on evidence establishing to the satisfaction of the Board that the person to whom it relates is no longer of good conduct; or

(*c*) on evidence establishing to the satisfaction of the Board that the person to whom it relates knowingly made a false or deceptive statement in relation to the application for the record suspension, or knowingly concealed some material particular in relation to that application.

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CLAUSE 124

SUBJECT AND EFFECT

This Clause amends the language from pardon to record suspension ("a pardon may be revoked is replaced by "a record suspension may be revoked").

In subsection (a), an amendment is made to add the reference to paragraph 4(1)(b).

REASON FOR CHANGE

This amendment updates the language in the Act and adds the reference to 4(1)(b).

RELATED CLAUSES

Clauses 109, 110 and 125

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CLAUSE 125

PRESENT SECTION

7.1 (1) If the Board proposes to revoke a pardon, it shall notify the person to whom the pardon was granted of its proposal in writing and advise that person that he or she is entitled to make, or have made on his or her behalf, any representations to the Board that he or she believes relevant either in writing or, if the Board so authorizes, orally at a hearing held for that purpose.

(2) The Board shall, before making its decision, consider any representations made to it within a reasonable time after the notification is given to a person pursuant to subsection (1).

PROPOSED SECTION

125. (1) Subsection 7.1(1) of the Act is replaced by the following:

7.1 (1) If the Board proposes to revoke a record suspension, it shall notify in writing the person to whom it relates of its proposal and advise that person that he or she is entitled to make, or have made on his or her behalf, any representations to the Board that he or she believes relevant either in writing or, with the Board's authorization, orally at a hearing held for that purpose.

(2) Subsection 7.1(2) of the English version of the Act is replaced by the following:

(2) The Board shall, before making its decision, consider any representations made to it within a reasonable time after the notification is given to a person under subsection (1).

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CLAUSE 125

SUBJECT AND EFFECT

Subsection 7.1(1) makes technical amendments to language for further clarity and to reflect the change to "record suspension" from "pardon".

Subsection 7.1(2) makes a technical amendment to language: "under subsection (1)" replaces "pursuant to subsection (1)."

REASON FOR CHANGE

The amendments change the language to reflect the change from "pardon" to "record suspension" and make other language changes for further clarity.

RELATED CLAUSES

Clauses 109, 110 and 124

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 126

PRESENT SECTION

7.2 A pardon granted to a person ceases to have effect if

(*a*) the person is subsequently convicted of

(i) an indictable offence under an Act of Parliament or a regulation made under an Act of Parliament,

(ii) an offence under the *Criminal Code*, except subsection 255(1), or under the *Controlled Drugs and Substances Act*, the *Firearms Act*, Part III or IV of the *Food and Drugs Act* or the *Narcotic Control Act*, chapter N-1 of the Revised Statutes of Canada, 1985, that is punishable either on conviction on indictment or on summary conviction, or

(iii) a service offence referred to in paragraph 4(*a*); or

(*b*) the Board is convinced by new information that the person was not eligible for a pardon at the time it was granted or issued.

PROPOSED SECTION

126. Section 7.2 of the Act is replaced by the following:

7.2 A record suspension ceases to have effect if

(*a*) the person to whom it relates is subsequently convicted of

(i) an offence referred to in paragraph 4(1)(*a*), or

(ii) any other offence under the *Criminal Code*, except subsection 255(1), or under the *Controlled Drugs and Substances Act*, the *Firearms Act*, Part III or IV of the *Food and Drugs Act* or the *Narcotic Control Act*, chapter N-1 of the Revised Statutes of Canada, 1985, that is punishable either on conviction on indictment or on summary conviction; or

(*b*) the Board is convinced by new information that the person was not eligible for the record suspension when it was ordered.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 126

SUBJECT AND EFFECT

This Clause makes technical amendments to language from "pardon" to "record suspension" and to other language for further clarity.

REASON FOR CHANGE

The amendments reflect the change from "pardon" to "record suspension" and make other minor language changes for clarity.

RELATED CLAUSES

Clauses 109, 110 and 115

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 127

PRESENT SECTION

8. No person shall use or authorize the use of an application form for or relating to any of the following matters that contains a question that by its terms requires the applicant to disclose a conviction in respect of which a pardon that has not been revoked or ceased to have effect has been granted to the applicant:

PROPOSED SECTION

127. The portion of section 8 of the Act before paragraph (*a*) is replaced by the following:

8. No person shall use or authorize the use of an application form for or relating to any of the following matters that contains a question that by its terms requires the applicant to disclose a conviction in respect of which a record suspension has been ordered and has not been revoked or ceased to have effect:

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Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 127

SUBJECT AND EFFECT

This Clause amends the language from "pardon" to "record suspension".

REASON FOR CHANGE

The amendment reflects the change in language from "pardon" to "record suspension".

RELATED CLAUSE

Clause 109

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 128

PRESENT SECTION

Not applicable

PROPOSED SECTION

The Act is amended by adding the following after section 9:

9.01 The Board may disclose decisions that order or refuse to order record suspensions. However, it may not disclose information that could reasonably be expected to identify an individual unless the individual authorizes the disclosure in writing.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 128

SUBJECT AND EFFECT

This new provision allows the National Parole Board to disclose decisions that order, or refuse to order, record suspensions, though it may not disclose information that could reasonably be expected to identify an individual unless authorized in writing by that individual.

REASON FOR CHANGE

The amendment reflects the ability of the National Parole Board to disclose decisions related to record suspensions.

RELATED CLAUSE

Clause 109

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 129

PRESENT SECTION

9.1(*c*) respecting the consent given by applicants to the verification of records and the disclosure of information contained in them, including the information to be given to applicants prior to obtaining their consent and the manner in which consent is to be given, for the purposes of subsections 6.3(3) and (7);

9.1(*c.1*) prescribing factors for the purposes of paragraph 4.1(3)(*d*); and

PROPOSED SECTION

129. (1) Paragraph 9.1(*c*) of the English version of the Act is replaced by the following:

(*c*) respecting the consent given by applicants to the verification of records and the disclosure of information contained in them, including the information to be given to applicants before obtaining their consent and the manner in which consent is to be given, for the purposes of subsections 6.3(3) and (7);

(2) Section 9.1 of the Act is amended by striking out "and" at the end of paragraph (*c.1*) and by adding the following after that paragraph:

(*c.2*) respecting the disclosure of decisions under section 9.01; and

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 129

SUBJECT AND EFFECT

Paragraph 9.1(c) makes technical amendment to language: "before obtaining" replaces "prior to obtaining."

Paragraph 9.1(c.2) adds a new provision (c.2) that establishes the authority for the Governor in Council to make Regulations that relate to the disclosure of decisions that order, or refuse to order, record suspensions.

REASON FOR CHANGE

Paragraph 9.1(c) makes minor language change for further clarity.

Paragraph 9.1(c.2), provides the ability to make regulations related to the disclosure of decisions taken by the National Parole Board.

RELATED CLAUSE

Clause 128

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 130

PRESENT SECTION

Not applicable

PROPOSED SECTION

130. The Act is amended by adding the following after section 10:

REPORT TO PARLIAMENT

11. (1) The Board shall, within three months after the end of each fiscal year, submit to the Minister a report for that year containing the following information:

(*a*) the number of applications for record suspensions made in respect of the offences referred to in each of paragraphs 4(1)(*a*) and (*b*);

(*b*) the number of record suspensions that the Board ordered or refused to order, in respect of the offences referred to in each of paragraphs 4(1)(*a*) and (*b*);

(*c*) the number of record suspensions ordered, categorized by the offence to which they relate and, if applicable, the province of residence of the applicant; and

(*d*) any other information required by the Minister.

(2) The Minister shall cause the report to be laid before each House of Parliament on any of the first 30 days on which that House is sitting after the day on which the Minister receives it.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 130

SUBJECT AND EFFECT

Subsection 11(1) is new and establishes that the National Parole Board will be required to report to the Minister within three (3) months of the end of each fiscal year.

Paragraphs 11(1) (a) to (d) require the National Parole Board to submit to the Minister a report containing:

- the number of applications for record suspensions made for both summary conviction and indictable offences;

- the number of record suspensions ordered and the number of record suspensions refused in respect of both summary conviction and indictable offences;

- the number of record suspensions ordered, indexed by the offence to which they relate and the province of residence of the applicant; and

- any other information the Minister may require.

Subsection 11(2) is a new provision that requires that the National Parole Board's annual report be tabled within 30 sitting days after the Minister receives it.

REASON FOR CHANGE

The amendment introduces a new reporting requirement to Parliament regarding record suspensions, refusals, applications and any other information required by the Minister.

RELATED CLAUSE

Clause 109

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 131

PRESENT SECTION

SCHEDULE 1
(Section 4 and subsection 6.3(9))

PROPOSED SECTION

131. Schedule 1 to the Act is amended by replacing the references after the heading "Schedule 1" with the following:

(Subsections 4(2), (3) and (5))

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 131

SUBJECT AND EFFECT

This amendment reflects the re-numbering of other sections.

REASON FOR CHANGE

The amendment ensures that the provisions of the Act that refer to Schedule 1 are appropriately referenced in the heading of Schedule 1.

RELATED CLAUSE

Clause 132

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 132

PRESENT SECTION

SCHEDULE 1
(Section 4 and subsection 6.3(9))

1. Offences

(*b*) under the following provisions of the *Criminal Code*, R.S.C. 1970, c. C-34, as that Act read before January 1, 1988:

(i) section 166 (parent or guardian procuring defilement), and

(ii) section 167 (householder permitting defilement);

PROPOSED SECTION

132. Subparagraphs 1(*b*)(i) and (ii) of Schedule 1 to the Act are replaced by the following:

(i) subsection 146(1) (sexual intercourse with a female under 14),

(ii) subsection 146(2) (sexual intercourse with a female 14 or more but under 16),

(iii) section 151 (seduction of a female 16 or more but under 18),

(iv) section 166 (parent or guardian procuring defilement), and

(v) section 167 (householder permitting defilement);

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 132

SUBJECT AND EFFECT

The Clause updates the list of offences in Schedule 1.

REASON FOR CHANGE

The amendment consolidates the three sub-sections of Schedule 1 [i) sexual offences involving a minor; ii) sexual offences that could involve a minor; and iii) historical sexual offences involving a minor] into two sub-sections. The effect is to subsume subsection 3 into subsection 1, thereby streamlining the schedule.

RELATED CLAUSES

Clauses 131 and 133

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 133

PRESENT SECTION

SCHEDULE 1
(Section 4 and subsection 6.3(9))

3. Offences

(*a*) under the following provisions of the *Criminal Code*, R.S.C. 1970, c. C-34, as that Act read before January 1, 1988:

(i) subsection 146(1) (sexual intercourse with a female under 14),

(ii) subsection 146(2) (sexual intercourse with a female 14 or more but under 16), and

(iii) section 151 (seduction of a female 16 or more but under 18);

(*b*) that are referred to in paragraph (*a*) and that are punishable under section 120 of the *National Defence Act*, R.S.C. 1970, c. N-4; and

(*c*) of attempt or conspiracy to commit an offence referred to in paragraph (*a*) or (*b*).

PROPOSED SECTION

133. Item 3 of Schedule 1 to the Act is repealed.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 133

SUBJECT AND EFFECT

The Clause updates the list of offences in Schedule 1

REASON FOR CHANGE

The amendment consolidates the three sub-sections of Schedule 1 [i) sexual offences involving a minor; ii) sexual offences that could involve a minor; and iii) historical sexual offences involving a minor] into two sub-sections. The effect is to subsume subsection 3 into subsection 1, thereby streamlining the schedule.

RELATED CLAUSES

Clauses 131 and 132

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 134

PRESENT SECTION

SCHEDULE 2
(Subsections 6.3(2) and (9))

1. Offences under the following provisions of the *Criminal Code*:

(*a*) subsection 7(4.1) (sexual offence against a child by an act or omission outside Canada);

(*b*) section 151 (sexual interference with a person under 16);

(*c*) section 152 (invitation to a person under 16 to sexual touching);

(*d*) section 153 (sexual exploitation of a person 16 or more but under 18);

(*e*) section 153.1 (sexual exploitation of a person with a disability);

(*f*) section 155 (incest);

(*g*) section 159 (anal intercourse);

(*h*) subsection 160(3) (bestiality in the presence of a person under 16 or inciting a person under 16 to commit bestiality);

(*i*) paragraph 163(1)(*a*) (obscene materials);

(*j*) paragraph 163(2)(*a*) (obscene materials);

(*k*) section 163.1 (child pornography);

(*l*) section 168 (mailing obscene matter);

(*m*) section 170 (parent or guardian procuring sexual activity);

(*n*) section 171 (householder permitting sexual activity);

(*o*) section 172 (corrupting children);

(*p*) section 173 (indecent acts);

(*q*) subsection 212(2) (living on avails of prostitution of a person under 18);

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(*r*) subsection 212(2.1) (living on avails of prostitution of a person under 18);

(*s*) subsection 212(4) (obtain, or attempt to obtain, sexual services of a person under 18);

(*t*) section 271 (sexual assault);

(*u*) subsection 272(1) and paragraph 272(2)(*a*) (sexual assault with firearm);

(*v*) subsection 272(1) and paragraph 272(2)(*b*) (sexual assault other than with firearm);

(*w*) section 273 (aggravated sexual assault);

(*x*) paragraph 273.3(1)(*a*) (removal of child under 16 from Canada for purposes of listed offences);

(*y*) paragraph 273.3(1)(*b*) (removal of child 16 or more but under 18 from Canada for purpose of listed offence);

(*z*) paragraph 273.3(1)(*c*) (removal of child under 18 from Canada for purposes of listed offences);

(*z.1*) section 280 (abduction of a person under 16);

(*z.2*) section 281 (abduction of a person under 14);

(*z.3*) paragraph 348(1)(*a*) with respect to breaking and entering a place with intent to commit in that place an indictable offence listed in this schedule;

(*z.4*) paragraph 348(1)(*b*) with respect to breaking and entering a place and committing in that place an indictable offence listed in this schedule;

(*z.5*) subsection 372(2) (indecent phone calls); and

(*z.6*) section 463 with respect to an attempt to commit an offence listed in this section or with respect to being an accessory after the fact to the commission of an offence listed in this schedule.

2. Offences under the following provisions of the *Criminal Code*, R.S.C. 1970, c. C-34, as that Act read before January 1988:

(*a*) subsection 146(1) (sexual intercourse with a female under 14);

(*b*) subsection 146(2) (sexual intercourse with a female 14 or more but under 16);

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(*c*) section 151 (seduction of a female 16 or more but under 18);

(*d*) section 153 (sexual intercourse with stepdaughter, etc., or female employee);

(*e*) section 155 (buggery or bestiality);

(*f*) section 157 (gross indecency);

(*g*) section 166 (parent or guardian procuring defilement); and

(*h*) section 167 (householder permitting defilement).

3. Offences under the following provisions of the *Criminal Code*, R.S.C. 1970, c. C-34, as that Act read before January 1983:

(a) section 144 (rape);

(*b*) section 145 (attempt to commit rape);

(*c*) section 149 (indecent assault on female);

(*d*) section 156 (indecent assault on male);

(*e*) section 245 (common assault); and

(*f*) subsection 246(1) (assault with intent to commit an indictable offence).

PROPOSED SECTION

134. Schedule 2 to the Act is replaced by the Schedule 2 set out in the schedule to this Act.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 134

SUBJECT AND EFFECT

The Clause replaces the existing schedule 2 in the *Criminal Records Act*.

REASON FOR CHANGE

The amendment removes from Schedule 2 sexual offences relating to a minor since persons convicted of those offences will no longer be eligible to apply for a record suspension, and therefore there will exist no possibility of needing to flag these offences under Schedule 2 for the possibility of disclosure by the Minister.

RELATED CLAUSE

Clause 122

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 135

PRESENT SECTION

3. The purpose of this Act is to contribute to the administration of justice and the rehabilitation of offenders and their reintegration into the community by enabling offenders to serve their sentences in the country of which they are citizens or nationals.

PROPOSED SECTION

135. Section 3 of the *International Transfer of Offenders Act* is replaced by the following:

3. The purpose of this Act is to enhance public safety and to contribute to the administration of justice and the rehabilitation of offenders and their reintegration into the community by enabling offenders to serve their sentences in the country of which they are citizens or nationals.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 135

SUBJECT AND EFFECT

The Clause explicitly includes the enhancement of public safety in the purpose of the Act.

REASON FOR CHANGE

Provisions in former Bill C-39, *An Act to amend the Corrections and Conditional Release Act and to make consequential amendments to other Acts*, proposed to reform the *Corrections and Conditional Release Act* to underscore public protection as the paramount consideration in correctional and conditional release decision-making. There is a need to align the *International Transfer of Offenders Act* (the Act) with this initiative. This can be achieved by explicitly including the enhancement of public safety in the purpose of the Act.

RELATED CLAUSE

Clause 19

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 136

PRESENT SECTION

10. (1) In determining whether to consent to the transfer of a Canadian offender, the Minister shall consider the following factors:

(a) whether the offender's return to Canada would constitute a threat to the security of Canada;

(b) whether the offender left or remained outside Canada with the intention of abandoning Canada as their place of permanent residence;

(c) whether the offender has social or family ties in Canada; and

(d) whether the foreign entity or its prison system presents a serious threat to the offender's security or human rights.

(2) In determining whether to consent to the transfer of a Canadian or foreign offender, the Minister shall consider the following factors:

PROPOSED SECTION

136. (1) Subsection 10(1) of the Act is replaced by the following:

10. (1) In determining whether to consent to the transfer of a Canadian offender, the Minister may consider the following factors:

(a) whether, in the Minister's opinion, the offender's return to Canada will constitute a threat to the security of Canada;

(b) whether, in the Minister's opinion, the offender's return to Canada will endanger public safety, including

(i) the safety of any person in Canada who is a victim, as defined in subsection 2(1) of the Corrections and Conditional Release Act, of an offence committed by the offender,

(ii) the safety of any member of the offender's family, in the case of an offender who has been convicted of an offence against a family member, or

(iii) the safety of any child, in the case of an offender who has been convicted of a sexual offence involving a child;

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(c) whether, in the Minister's opinion, the offender is likely to continue to engage in criminal activity after the transfer;

(d) whether, in the Minister's opinion, the offender left or remained outside Canada with the intention of abandoning Canada as their place of permanent residence;

(e) whether, in the Minister's opinion, the foreign entity or its prison system presents a serious threat to the offender's security or human rights;

(f) whether the offender has social or family ties in Canada;

(g) the offender's health;

(h) whether the offender has refused to participate in a rehabilitation or reintegration program;

(i) whether the offender has accepted responsibility for the offence for which they have been convicted, including by acknowledging the harm done to victims and to the community;

(j) the manner in which the offender will be supervised, after the transfer, while they are serving their sentence;

(k) whether the offender has cooperated, or has undertaken to cooperate, with a law enforcement agency; or

(l) any other factor that the Minister considers relevant.

(2) The portion of subsection 10(2) of the Act before paragraph (*a*) is replaced by the following:

(2) In determining whether to consent to the transfer of a Canadian or foreign offender, the Minister may consider the following factors:

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 136

SUBJECT AND EFFECT

The proposed amendment would add factors the Minister may consider in making decisions regarding the international transfer of Canadian offenders. Changes to sub-clause two place further emphasis on the discretionary nature of the Minister's decision when deciding which factors to consider.

REASON FOR CHANGE

A number of denied international transfer applications have been challenged in court in an effort to set aside those decisions. By providing additional factors in the Act, the Minister of Public Safety will be in a better position to more clearly demonstrate why a transfer application, in certain circumstances, cannot be approved. Adding factors, and making consideration of all factors discretionary, provides the Minister of Public Safety with a more flexible and comprehensive framework within which to consider transfer applications.

Allowing consideration of factors to be discretionary provides the Minister of Public Safety with a more flexible and comprehensive framework within which to consider transfer applications.

RELATED CLAUSES

None

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 137

PRESENT SECTION

2. The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

PROPOSED SECTION

CONSEQUENTIAL AMENDMENTS

Canadian Human Rights Act

137. Section 2 of the English version of the *Canadian Human Rights Act* is replaced by the following:

2. The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted <u>or in respect of which a record suspension has been ordered.</u>

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 137

SUBJECT AND EFFECT

Consequential amendment to the *Canadian Human Rights Act* are made as a result of the change in language from "pardon" to "record suspension".

REASON FOR CHANGE

As a result of the change in language from "pardon" to "record suspension", the language in other Acts also needs to be updated.

RELATED CLAUSES

Clauses 109, 138 and 139

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 138

PRESENT SECTION

3. (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted.

PROPOSED SECTION

138. Subsection 3(1) of the English version of the Act is replaced by the following:

3. (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction <u>for an offence</u> for which a pardon has been granted <u>or in respect of which a record suspension has been ordered.</u>

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 138

SUBJECT AND EFFECT

Consequential amendment to the *Canadian Human Rights Act* are made as a result of the change in language from "pardon" to "record suspension".

REASON FOR CHANGE

As a result of the change in language from "pardon" to "record suspension", the language in other Acts also needs to be updated.

RELATED CLAUSES

Clauses 109, 137 and 139

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 139

PRESENT SECTION

25. In this Act,

"conviction for which a pardon has been granted"
« état de personne graciée »

"conviction for which a pardon has been granted" means a conviction of an individual for an offence in respect of which a pardon has been granted by any authority under law and, if granted or issued under the *Criminal Records Act*, has not been revoked or ceased to have effect;

25. Les définitions qui suivent s'appliquent à la présente loi.

« état de personne graciée »
"conviction for which a pardon has been granted"

« état de personne graciée » État d'une personne physique qui a légalement obtenu une réhabilitation qui, si elle a été octroyée ou délivrée en vertu de la *Loi sur le casier judiciaire*, n'a pas été révoquée ou annulée.

PROPOSED SECTION

139. (1) The definition "conviction for which a pardon has been granted" in section 25 of the English version of the Act is repealed.

(2) The definition "état de personne gracifiée" in section 25 of the French version of the Act is replaced by the following

« état de personne graciée » État d'une personne physique qui a obtenu un pardon accordé en vertu de la prérogative royale de clémence que possède Sa Majesté ou de l'article 748 du *Code criminel* ou une suspension du casier au titre de la *Loi sur le casier judiciaire*, qui n'a pas été révoqué ni annulé.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(3) Section 25 of the English version of the Act is amended by adding the following in alphabetical order:

"conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered" means a conviction of an individual for an offence in respect of which a pardon has been granted under Her Majesty's royal prerogative of mercy or under section 748 of the *Criminal Code* or a record suspension has been ordered under the *Criminal Records Act*, that has not been revoked or ceased to have effect;

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 139

SUBJECT AND EFFECT

Consequential amendment to the *Canadian Human Rights Act* are made as a result of the change in language from "pardon" to "record suspension".

REASON FOR CHANGE

As a result of the change in language from "pardon" to "record suspension", the language in other Acts also needs to be updated.

RELATED CLAUSES

Clauses 109, 137, 138 and 165

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 140

PRESENT SECTION

63. Quiconque est déclaré coupable d'une contravention n'est pas coupable d'une infraction criminelle et une contravention ne constitue pas une infraction pour l'application de la *Loi sur le casier judiciaire*, sauf si elle aboutit à une déclaration de culpabilité par mise en accusation.

PROPOSED SECTION

Contraventions Act

140. Section 63 of the French version of the *Contraventions Act* is replaced by the following:

63. Quiconque est déclaré coupable d'une contravention n'est pas coupable d'une infraction criminelle et une contravention ne constitue pas une infraction pour l'application de la *Loi sur le casier judiciaire*, sauf si elle aboutit à une déclaration de culpabilité par voie de mise en accusation.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 140

SUBJECT AND EFFECT

Consequential amendments to the *Contraventions Act* are made as a result of the change in language from "pardon" to "record suspension".

REASON FOR CHANGE

As a result of the change in language from "pardon" to "record suspension", the language in other Acts also needs to be updated.

RELATED CLAUSE

None

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 141

PRESENT SECTION

490.011 (1) Les définitions qui suivent s'appliquent au présent article et aux articles 490.012 à 490.032.

« réhabilitation » "*pardon*"

« réhabilitation » Réhabilitation octroyée par toute autorité en vertu de la loi, autre qu'un pardon absolu accordé en vertu de la prérogative royale de clémence que possède Sa Majesté ou de l'article 748, qui n'a pas été révoquée ni n'a cessé d'avoir effet.

490.011 (1) The following definitions apply in this section and in sections 490.012 to 490.032.

"*pardon*" « *réhabilitation* »

"pardon" means a pardon granted by any authority under law, other than a free pardon granted under Her Majesty's royal prerogative of mercy or under section 748, that has not ceased to have effect or been revoked.

PROPOSED SECTION

Criminal Code

141. (1) The definition "rehabilitation" in subsection 490.011(1) of the French version of the *Criminal Code* is repealed.

(2) The definition "pardon" is subsection 490.011(1) of the English version of the Act is replaced by the following:

"pardon" means a <u>conditional</u> pardon granted under Her Majesty's royal prerogative of mercy or under section 748 that has not been revoked.

(3) Subsection 490.011(1) of the Act is amended by adding the following in alphabetical order:

"record suspension" means a record suspension, as defined in subsection 2(1) of the *Criminal Records Act*, that has not been revoked or ceased to have effect.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(4) Subsection 490.011(1) of the French version of the Act is amended by adding the following in alphabetical order:

« pardon » Pardon conditionnel accordé en vertu de la prérogative royale de clémence que possède Sa Majesté ou de l'article 748 qui n'a pas été révoqué.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 141

SUBJECT AND EFFECT

Consequential amendments to the *Criminal Code* are made as a result of the change in language from "pardon" to "record suspension".

REASON FOR CHANGE

As a result of the change in language from "pardon" to "record suspension", the language in other Acts also needs to be updated.

RELATED CLAUSES

Clauses 109, 142, 143, 144 and 165

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 142

PRESENT SECTION

490.015 (3) Despite subsections (1) and (2), a person may apply for a termination order once they receive a pardon.

490.015 (5) A person whose application is refused may re-apply if five years have elapsed since they made the previous application. They may also re-apply once they receive a pardon. However, they may not re-apply under this subsection if an order is made with respect to them under section 490.012 of this Act or section 227.01 of the *National Defence Act* after the previous application was made.

PROPOSED SECTION

142. (1) Subsection 490.015(3) of the Act is replaced by the following:

(3) Despite subsections (1) and (2), a person may apply for a termination order once they receive a pardon or once a record suspension is ordered.

(2) Subsection 490.015(5) of the Act is replaced by the following:

(5) A person whose application is refused may re-apply if five years have elapsed since they made the previous application. They may also re-apply once they receive a pardon or once a record suspension is ordered. However, they may not reapply under this subsection if an order is made with respect to them under section 490.012 of this Act or section 227.01 of the National Defence Act after the previous application was made.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 142

SUBJECT AND EFFECT

Consequential amendments to the *Criminal Code* are made as a result of the change in language from "pardon" to "record suspension".

REASON FOR CHANGE

As a result of the change in language from "pardon" to "record suspension", the language in other Acts also needs to be updated.

RELATED CLAUSES

Clauses 109, 141, 143 and 144

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 143

PRESENT SECTION

490.022 (2)

(*c*) the day on which a person referred to in paragraph 490.02(1)(*b*) provides satisfactory proof of a pardon to a person who collects information, within the meaning of subsection 3(1) of the *Sex Offender Information Registration Act*, at a registration centre.

PROPOSED SECTION

143. Paragraph 490.022(2)(*c*) of the Act is replaced by the following:

(*c*) the day on which a person referred to in paragraph 490.02(1)(*b*) provides satisfactory proof of a pardon or record suspension to a person who collects information, as defined in subsection 3(1) of the *Sex Offender Information Registration Act*, at a registration centre.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 143

SUBJECT AND EFFECT

Consequential amendments to the *Criminal Code* are made as a result of the change in language from "pardon" to "record suspension".

REASON FOR CHANGE

As a result of the change in language from "pardon" to "record suspension", the language in other Acts also needs to be updated.

RELATED CLAUSES

Clauses 109, 141, 142 and 144

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 144

PRESENT SECTION

490.026 (4) Despite subsections (2) and (3), a person may apply for a termination order once they receive a pardon.

490.026 (5) A person whose application is refused may apply again if five years have elapsed since they made the application. They may also apply again if they receive a pardon. However, they may not apply again if, after they made the application, they become subject to an obligation under section 490.02901, under section 227.06 of the *National Defence Act* or under section 36.1 of the *International Transfer of Offenders Act* or an order under section 490.012 or under section 227.01 of the *National Defence Act*.

PROPOSED SECTION

144. Subsections 490.026(4) and (5) of the Act are replaced by the following:

(4) Despite subsections (2) and (3), a person may apply for a termination order once they receive a pardon or once a record suspension is ordered.

(5) A person whose application is refused may apply again if five years have elapsed since they made the previous application. They may also apply again once they receive a pardon or once a record suspension is ordered. However, they may not apply again if, after the previous application was made, they become subject to an obligation under section 490.02901, under section 227.06 of the *National Defence Act* or under section 36.1 of the International Transfer of Offenders Act or to an order under section 490.012 or under section 227.01 of the *National Defence Act*.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 144

SUBJECT AND EFFECT

Consequential amendments to the *Criminal Code* are made as a result of the change in language from "pardon" to "record suspension".

REASON FOR CHANGE

As a result of the change in language from "pardon" to "record suspension", the language in other Acts also needs to be updated.

RELATED CLAUSES

Clauses 109, 141, 142 and 143

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 145

PRESENT SECTION

672.35

(c) the National Parole Board or any provincial parole board may take the verdict into account in considering an application by the accused for parole or pardon in respect of any other offence.

PROPOSED SECTION

145. Paragraph 672.35(*c*) of the Act is replaced by the following:

(*c*) the National Parole Board or any provincial parole board may take the verdict into account in considering an application by the accused for parole or for a record suspension under the *Criminal Records Act* in respect of any other offence.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 145

SUBJECT AND EFFECT

Consequential amendments to the *Criminal Code* are made as a result of the change in language from "pardon" to "record suspension".

REASON FOR CHANGE

As a result of the change in language from "pardon" to "record suspension", the language in other Acts also needs to be updated.

RELATED CLAUSES

Clauses 109, 146 and 163

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 146

PRESENT SECTION

750 (4) A person to whom subsection (3) applies may, at any time before a pardon is granted or issued to the person under section 4.1 of the *Criminal Records Act*, apply to the Governor in Council for the restoration of one or more of the capacities lost by the person by virtue of that subsection.

PROPOSED SECTION

146. Subsection 750(4) of the Act is replaced by the following:

(4) A person to whom subsection (3) applies may, at any time before a record suspension for which he or she has applied is ordered under the *Criminal Records Act*, apply to the Governor in Council for the restoration of one or more of the capacities lost by the person by virtue of that subsection.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 146

SUBJECT AND EFFECT

Consequential amendments to the *Criminal Code* are made as a result of the change in language from "pardon" to "record suspension".

REASON FOR CHANGE

As a result of the change in language from "pardon" to "record suspension", the language in other Acts also needs to be updated.

RELATED CLAUSES

Clauses 109 and 145

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 147

SUBJECT AND EFFECT

This Clause makes a consequential amendment to the *Criminal Code* as a result of the change of definition of parole supervisor.

REASON FOR CHANGE

As a result of the change in definition of parole supervisor in section 99(1) of the *Corrections and Conditional Release Act*, section 753.2(3) of the *Criminal Code* is updated.

RELATED CLAUSE

Clause 70

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 148

PRESENT SECTION

10. (8) Despite anything in this section, stored bodily substances of a person in respect of whom a pardon, within the meaning of section 2 of the *Criminal Records Act*, is in effect shall be kept separate and apart from other stored bodily substances, and no such bodily substance shall be used for forensic DNA analysis, nor shall the existence of such a bodily substance be communicated to any person.

PROPOSED SECTION

DNA Identification Act

148. Subsection 10(8) of the *DNA Identification Act* is replaced by the following:

(8) Despite anything in this section, stored bodily substances of a person in respect of whom a record suspension, as defined in subsection 2(1) of the *Criminal Records Act*, is in effect shall be kept separate and apart from other stored bodily substances, and no such bodily substance shall be used for forensic DNA analysis, nor shall the existence of such a bodily substance be communicated to any person.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 148

SUBJECT AND EFFECT

Consequential amendments to the *DNA Identification Act* are made as a result of the change in language from "pardon" to "record suspension".

REASON FOR CHANGE

As a result of the change in language from "pardon" to "record suspension", the language in other Acts also needs to be updated.

RELATED CLAUSES

Clauses 109 and 165

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 149

PRESENT SUBSECTION

36. (3)(*b*) inadmissibility under subsections (1) and (2) may not be based on a conviction in respect of which a pardon has been granted and has not ceased to have effect or been revoked under the *Criminal Records Act*, or in respect of which there has been a final determination of an acquittal;

PROPOSED SECTION

Immigration and Refugee Protection Act

149. Paragraph 36(3)(*b*) of the *Immigration and Refugee Protection Act* is replaced by the following:

(*b*) inadmissibility under subsections (1) and (2) may not be based on a conviction in respect of which a record suspension has been ordered and has not been revoked or ceased to have effect under the *Criminal Records Act*, or in respect of which there has been a final determination of an acquittal;

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 149

SUBJECT AND EFFECT

Consequential amendments would be required to the *Immigration and Refugee Protection Act* as a result of the change in language from "pardon" to "record suspension".

REASON FOR CHANGE

As a result of the change in language from "pardon" to "record suspension", the language in other Acts also needs to be updated.

RELATED CLAUSES

Clauses 109, 150 and 165

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 150

PRESENT SECTION

53. (*f*) the effect of a pardon under the *Criminal Records Act* on the status of permanent residents and foreign nationals and removal orders made against them; and

PROPOSED SECTION

150. Paragraph 53(*f*) of the Act is replaced by the following:

…

(*f*) the effect of a record suspension under the *Criminal Records Act* on the status of permanent residents and foreign nationals and removal orders made against them; and

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 150

SUBJECT AND EFFECT

Consequential amendments would be required to the *Immigration and Refugee Protection Act* as a result of the change in language from pardon to record suspension.

REASON FOR CHANGE

As a result of the change in language from pardon to record suspension, the language in other Acts also needs to be updated.

RELATED CLAUSES

Clauses 109 and 149

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 151

PRESENT SECTION

Not applicable

PROPOSED SECTION

Limiting Pardons for Serious Crimes Act

151. The *Limiting Pardons for Serious Crimes Act* is amended by adding the following after section 11:

12. The *Criminal Records Act*, as it read immediately before the day on which this Act comes into force, applies to a pardon that was granted or issued before that day and that has not been revoked or ceased to have effect.

13. Section 12 is deemed to have come into force on June 29, 2010.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 151

SUBJECT AND EFFECT

This transitional provision addresses that pardons granted, which have not been revoked to ceased to have effect, before June 29, 2010, will continue to be governed by the provisions of the *Criminal Records Act* as it read before June 29, 2010.

REASON FOR CHANGE

To provide clarity on how pardons granted before June 29, 2010 will be governed.

RELATED CLAUSES

None

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 152

PRESENT SECTION

202.14 (2)(*h*) The National Parole Board or any provincial parole board may take the finding into account in considering an application by that person for parole or pardon in respect of any other offence.

PROPOSED SECTION

National Defence Act

152. Paragraph 202.14(2)(*h)* of the *National Defence Act* is replaced by the following:

(*h*) the National Parole Board or any provincial parole board may take the finding into account in considering an application by that person for parole or for a record suspension under the *Criminal Records Act* in respect of any other offence.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 152

SUBJECT AND EFFECT

Consequential amendments would be required to the *National Defence Act* as a result of the change in language from pardon to record suspension.

REASON FOR CHANGE

As a result of the change in language from pardon to record suspension, the language in other Acts also needs to be updated.

RELATED CLAUSES

Clauses 109, 153, 154, 155 and 163

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 153

PRESENT SECTION

227. (1) – defintions - « réhabilitation » Réhabilitation octroyée par toute autorité en vertu de la loi, à l'exclusion du pardon absolu accordé en vertu de la prérogative royale de clémence que possède Sa Majesté ou de l'article 748 du *Code criminel*, qui n'a pas été révoquée ou n'a pas cessé d'avoir effet.

227. (2) – defintions – "pardon" means a pardon granted by any authority under law, other than a free pardon granted under Her Majesty's royal prerogative of mercy or under section 748 of the *Criminal Code*, that has not ceased to have effect or been revoked.

PROPOSED SECTION

153. (1) The definition "rehabilitation" in section 227 of the French version of the Act is repealed.

(2) The definition "pardon" in section 227 of the English version of the Act is replaced by the following:

"pardon" means a conditional pardon granted under Her Majesty's royal prerogative of mercy or under section 748 of the *Criminal Code* that has not been revoked.

(3) Section 227 of the Act is amended by adding the following in alphabetical order:

"record suspension" means a record suspension, as defined in subsection 2(1) of the *Criminal Records Act*, that has not been revoked or ceased to have effect.

(4) Section 227 of the French version of the Act is amended by adding the following in alphabetical order :

« pardon » Pardon conditionnel accordé en vertu de la prérogative royale de clémence que possède Sa Majesté ou de l'article 748 du *Code criminel* qui n'a pas été révoqué.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 153

SUBJECT AND EFFECT

Consequential amendments would be required to the *National Defence Act* as a result of the change in language from pardon to record suspension.

REASON FOR CHANGE

As a result of the change in language from pardon to record suspension, the language in other Acts also needs to be updated.

RELATED CLAUSES

Clauses 109, 152, 154, 155 and 165

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 154

PRESENT SECTION

227.03 (3) Despite subsections (1) and (2), a person may apply for a termination order once they receive a pardon.

227.03 (5) A person whose application is refused may re-apply if five years have elapsed since they made the previous application. They may also re-apply once they receive a pardon. However, they may not re-apply under this subsection if an order is made with respect to them under section 227.01 of this Act or section 490.012 of the *Criminal Code* after the previous application was made.

PROPOSED SECTION

154. (1) Subsection 227.03(3) of the Act is replaced by the following:

(3) Despite subsections (1) and (2), a person may apply for a termination order once they receive a pardon or once a record suspension is ordered.

(2) Subsection 227.03(5) of the Act is replaced by the following:

(5) A person whose application is refused may re-apply if five years have elapsed since they made the previous application. They may also re-apply once they receive a pardon or once a record suspension is ordered. However, they may not re-apply under this subsection if an order is made with respect to them under section 227.01 of this Act or section 490.012 of the *Criminal Code* after the previous application was made.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 154

SUBJECT AND EFFECT

Consequential amendments would be required to the *National Defence Act* as a result of the change in language from pardon to record suspension.

REASON FOR CHANGE

As a result of the change in language from pardon to record suspension, the language in other Acts also needs to be updated.

RELATED CLAUSES

Clauses 109, 152, 153 and 155

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 155

PRESENT SECTION

227.12 (4) Despite subsections (2) and (3), a person may apply for a termination order once they receive a pardon.

227.12 (5) A person whose application is refused may apply again if five years have elapsed since they made the application. They may also apply again if they receive a pardon. However, they may not apply again if, after they made the application, they become subject to an obligation under section 490.019 or 490.02901 of the *Criminal Code* or section 36.1 of the *International Transfer of Offenders Act* or an order under section 227.01 of this Act or section 490.012 of the *Criminal Code*.

PROPOSED SECTION

155. Subsection 227.12(4) and (5) of the Act are replaced by the following:

(4) Despite subsections (2) and (3), a person may apply for a termination order once they receive a pardon or once a record suspension is ordered.

(5) A person whose application is refused may apply again if five years have elapsed since they made the previous application. They may also apply again once they receive a pardon or once a record suspension is ordered. However, they may not apply again if, after the previous application was made, they become subject to an obligation under section 490.019 or 490.02901 of the *Criminal Code* or under section 36.1 of the *International Transfer of Offenders Act* or to an order under section 227.01 of this Act or section 490.012 of the *Criminal Code*.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 155

SUBJECT AND EFFECT

Consequential amendments would be required to the *National Defence Act* as a result of the change in language from pardon to record suspension.

REASON FOR CHANGE

As a result of the change in language from pardon to record suspension, the language in other Acts also needs to be updated.

RELATED CLAUSES

Clauses 109, 152, 153 and 154

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 156

PRESENT SECTION

82. (1)(*d*) the National Parole Board or any provincial parole board may consider the finding of guilt in considering an application for conditional release or pardon.

PROPOSED SECTION

Youth Criminal Justice Act

156. Paragraph 82(1)*d*) of the *Youth Criminal Justice Act* is replaced by the following:

(*d*) the National Parole Board or any provincial parole board may consider the finding of guilt in considering an application for conditional release or for a record suspension under the *Criminal Records Act*.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 156

SUBJECT AND EFFECT

Consequential amendments would be required to the *Youth Criminal Justice Act* as a result of the change in language from pardon to record suspension.

REASON FOR CHANGE

As a result of the change in language from pardon to record suspension, the language in other Acts also needs to be updated.

RELATED CLAUSES

Clauses 109, 157, 158, 159 and 163

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 157

PRESENT SECTION

119. (1)(n)(iii) considering an application for conditional release or pardon made by the young person, whether as a young person or an adult,

PROPOSED SECTION

157. Subparagraph 119(1)(*n*)(iii) of the Act is replaced by the following:

...

(iii) considering an application for conditional release, or for a record suspension under the *Criminal Records Act*, made by the young person, whether as a young person or an adult,

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 157

SUBJECT AND EFFECT

Consequential amendments would be required to the *Youth Criminal Justice Act* as a result of the change in language from pardon to record suspension.

REASON FOR CHANGE

As a result of the change in language from pardon to record suspension, the language in other Acts also needs to be updated.

RELATED CLAUSES

Clauses 109, 156, 158 and 159

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 158

PRESENT SECTION

120. (4)(c)(iii) considering an application for conditional release or pardon made by the young person after the young person becomes an adult.

PROPOSED SECTION

158. Subparagraph 120(4)(*c*)(iii) of the Act is replaced by the following:

(iii) considering an application for conditional release, or for a record suspension under the *Criminal Records Act*, made by the young person after the young person becomes an adult.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 158

SUBJECT AND EFFECT

Consequential amendments would be required to the *Youth Criminal Justice Act* as a result of the change in language from pardon to record suspension.

REASON FOR CHANGE

As a result of the change in language from pardon to record suspension, the language in other Acts also needs to be updated.

RELATED CLAUSES

Clauses 109, 156, 157 and 159

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 159

PRESENT SECTION

128. (5) Despite subsections (1), (2) and (4), an entry that is contained in a system maintained by the Royal Canadian Mounted Police to match crime scene information and that relates to an offence committed or alleged to have been committed by a young person shall be dealt with in the same manner as information that relates to an offence committed by an adult for which a pardon granted under the *Criminal Records Act* is in effect.

PROPOSED SECTION

159. Subsection 128(5) of the Act is replaced by the following:

(5) Despite subsections (1), (2) and (4), an entry that is contained in a system maintained by the Royal Canadian Mounted Police to match crime scene information and that relates to an offence committed or alleged to have been committed by a young person shall be dealt with in the same manner as information that relates to an offence committed by an adult for which a record suspension ordered under the *Criminal Records Act* is in effect.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 159

SUBJECT AND EFFECT

Consequential amendments would be required to the *Youth Criminal Justice Act* as a result of the change in language from pardon to record suspension.

REASON FOR CHANGE

As a result of the change in language from pardon to record suspension, the language in other Acts also needs to be updated.

RELATED CLAUSES

Clauses 109, 156, 157, 158 and 165

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 160

PRESENT SECTION

Not applicable

PROPOSED SECTION

TERMINOLOGY CHANGES

160. In the following provisions, "National Parole Board" is replaced by "Parole Board of Canada":

(*a*) Schedule I to the *Access to Information Act*;

(*b*) in the *Corrections and Conditional Release Act*,

(i) subparagraph (*a*)(ii) of the definition "inmate" in subsection 2(1),

(ii) paragraph 4(*a*),

(iii) subsection 25(1),

(iv) the definition "Board" in subsection 99(1),

(v) paragraph 167(2)(*a*),

(vi) paragraph 177(*b*),

(vii) subsections 178(1) and (2),

(viii) subsections 179(1) and (3), and

(ix) section 180;

(*c*) in the *Criminal Code*,

(i) subparagraph (b)(xi) of the definition "justice system participant" in section 2,

(ii) paragraph 672.35(*c*),

(iii) paragraphs 746.1(2)(*c*) and (3)(*c*),

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(iv) subsection 753.2(3), and

(v) subsections 761(1) and (2);

(*d*) in the *Criminal Records Act*,

(i) the definition "Board" in subsection2(1), and

(ii) the heading before section 2.1;

(*e*) section 5 of the *Department of Public Safety and Emergency Preparedness Act*;

(*f*) in the *Financial Administration Act*,

(i) Schedule I.1,

(ii) Schedule IV, and

(iii) Part II of Schedule VI;

(*g*) section 28 of the *International Transfer of Offenders Act*;

(*h*) in the *National Defence Act*,

(i) paragraph 202.14(2)(*h*), and

(ii) subsection 222(2);

(*i*) subsection 6(9) of the *Prisons and Reformatories Act*;

(*j*) in the *Privacy Act*,

(i) section 24, and

(ii) the schedule, under the heading "OTHER GOVERNMENT INSTITUTIONS";

(*k*) Schedule I to the *Public Sector Compensation Act*, under the heading "OTHER PORTIONS OF THE PUBLIC SERVICE"; and

(*l*) in the *Youth Criminal Justice Act*,

(i) paragraph 77(3)(*b*), and

(ii) paragraph 82(1)(*d*).

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 160

SUBJECT AND EFFECT

This Clause changes the name of the National Parole Board to the Parole Board of Canada in various Acts.

REASON FOR CHANGE

As a result of the change in the name of the National Parole Board to the Parole Board of Canada, it is necessary to make this change in other Acts that reference the Parole Board of Canada.

RELATED CLAUSE

Clause 103

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 161

PRESENT SECTION

Not applicable

PROPOSED SECTION

161. Subject to section 162, an application for a pardon under the *Criminal Records Act* in respect of an offence that is referred to in paragraph 4(*a*) or (*b*) of that Act, as it read immediately before the day on which this section comes into force, and that is committed before that day shall be dealt with and disposed of in accordance with the *Criminal Records Act*, as amended by this Part, as though it were an application for a record suspension.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 161

SUBJECT AND EFFECT

The transitional provisions address how this legislation would apply to new applications for record suspensions and pending applications for pardons under the *Criminal Records Act.* Applications for record suspensions for the offences outlined in paragraph 4(a) or (b) of that Act, which have not been disposed of (i.e., decided) will be reviewed according to these amendments.

REASON FOR CHANGE

This change establishes how applications for record suspensions for offences in paragraph 4(a) or (b) of that Act will be addressed once the amendments are in force.

RELATED CLAUSE

Clause 162

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 162

PRESENT SECTION

Not applicable

PROPOSED SECTION

162. An application for a pardon under the *Criminal Records Act* that is made on or after the day on which the *Limiting Pardons for Serious Crimes Act* came into force and before the day on which this section comes into force shall be dealt with and disposed of in accordance with the *Criminal Records Act*, as it read when the Board received the application, if the application is not finally disposed of on the day on which this section comes into force.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 162

SUBJECT AND EFFECT

This is a transitional provision that explains that pardon applications received between June 29, 2010 and the date that these amendments come into force will be reviewed pursuant to the *Criminal Records Act* as it was amended by the *Limiting Pardons for Serious Crimes Act.*

REASON FOR CHANGE

This change establishes how pending pardon applications will be reviewed.

RELATED CLAUSE

Clause 161

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 163

PRESENT SECTION

Not applicable

PROPOSED SECTION

163. A reference to an application for a record suspension in the following provisions, as enacted by this Part, is deemed also to be a reference to an application for a pardon that is not finally disposed of on the day on which this section comes into force:

(*a*) paragraph 672.35(*c*) and subsection 750(4) of the *Criminal Code*;

(*b*) paragraph 202.14(2)(*h*) of the *National Defence Act*; and

(*c*) paragraph 82(1)(*d*) and subparagraphs 119(1)(*n*)(iii) and 120(4)(*c*)(iii) of the *Youth Criminal Justice Act*.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 163

SUBJECT AND EFFECT

This is a transitional provision that outlines that any applications for pardons for these offences that have not been disposed of when these amendments come into force will be governed by the previous rules.

REASON FOR CHANGE

This change addresses how the applications related to pardons, as referenced in these Acts, will be processed once these amendments come into force.

RELATED CLAUSES

Clauses 145, 152 and 156

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 164

PRESENT SECTION

Not applicable

PROPOSED SECTION

164. The *Criminal Records Act,* as it read immediately before the day on which this section comes into force, applies to a pardon that was granted on or after the day on which the *Limiting Pardons for Serious Crimes Act,* chapter 5 of the Statutes of Canada, 2010, came into force and before the day on which this section comes into force and that has not been revoked or ceased to have effect.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 164

SUBJECT AND EFFECT

This is a transitional provision outlines that existing pardons, which have not been revoked or ceased to have effect, would be governed by the *Criminal Records Act* as amended by the *Limiting Pardons for Serious Crime Act.*

REASON FOR CHANGE

This change provides clarity as to how pardons that have been granted between the time that the *Limiting Pardons for Serious Crime Act* came into force and the time when these amendments come into force.

RELATED CLAUSE

None

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 165

PRESENT SECTION

Not applicable

PROPOSED SECTION

165. A reference to a record suspension in the following provisions, as enacted by this Part, is deemed also to be a reference to a pardon that is granted or issued under the *Criminal Records Act*:

(*a*) the definition "conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered" in section 25 of the *Canadian Human Rights Act*;

(*b*) the definition record suspension in subsection 490.011(1) of the *Criminal Code*;

(*c*) subsection 10(8) of the *DNA Identification Act*;

(*d*) paragraphs 36(3)(*b*) and 53(*f*) of the *Immigration and Refugee Protection Act*;

(*e*) the definition record suspension in section 227 of the *National Defence Act*; and

(*f*) subsection 128(5) of the *Youth Criminal Justice Act*.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 165

SUBJECT AND EFFECT

This is a transitional provision that outlines that a reference to record suspensions for these offences, is the same as a reference to a pardon that was granted or issued before these amendments come into force.

REASON FOR CHANGE

This change outlines that the term pardon and record suspension in these offences mean the same type of relief for the individual.

RELATED CLAUSES

Clauses 139, 141, 148, 149, 150, 153 and 159

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 166

PRESENT SECTION

Not applicable

PROPOSED SECTION

COMING INTO FORCE

166. (1) The provisions of this Part, other than sections 108 to 146, 148 to 159 and 161 to 165, come into force on a day or days to be fixed by order of the Governor in Council.

(2) Sections 135 and 136 come into force on a day to be fixed by order of the Governor in Council.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 166

SUBJECT AND EFFECT

This provision outlines which sections of the Bill will come into force on a day to be fixed by order of the Governor in Council.

REASON FOR CHANGE

Some sections of the Bill will come into force by order of the Governor in Council, while other sections will come into force upon Royal Assent.

Sections 108 – 134, 137 – 159, 161 – 165, which amend the *Criminal Records Act*, come into force upon Royal Assent. Sections 135 – 136, which amend the *International Transfer of Offenders Act* come into force by order of the Governor in Council.

RELATED CLAUSES

Clauses 108 to 146, 148 to 159 and 161 to 165

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 167

PRESENT SUBSECTION

2. (1) The definitions in this subsection apply in this Act.

…

"presumptive offence" means

(*a*) an offence committed, or alleged to have been committed, by a young person who has attained the age of fourteen years, or, in a province where the lieutenant governor in council has fixed an age greater than fourteen years under section 61, the age so fixed, under one of the following provisions of the *Criminal Code*:

(i) section 231 or 235 (first degree murder or second degree murder within the meaning of section 231),

(ii) section 239 (attempt to commit murder),

(iii) section 232, 234 or 236 (manslaughter), or

(iv) section 273 (aggravated sexual assault); or

(*b*) a serious violent offence for which an adult is liable to imprisonment for a term of more than two years committed, or alleged to have been committed, by a young person after the coming into force of section 62 (adult sentence) and after the young person has attained the age of fourteen years, or, in a province where the lieutenant governor in council has fixed an age greater than fourteen years under section 61, the age so fixed, if at the time of the commission or alleged commission of the offence at least two judicial determinations have been made under subsection 42(9), at different proceedings, that the young person has committed a serious violent offence.

…

"serious violent offence" means an offence in the commission of which a young person causes or attempts to cause serious bodily harm.

PROPOSED AMENDMENTS

YOUTH CRIMINAL JUSTICE

YOUTH CRIMINAL JUSTICE ACT

167. (1) The definition "presumptive offence" in subsection 2(1) of the *Youth Criminal Justice Act* is repealed.

Released under the Access to Information Act /
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(2) The definition "serious violent offence" in subsection 2(1) of the Act is replaced by the following:

"serious violent offence" means an offence under one of the following provisions of the *Criminal Code*:

(*a*) section 231 or 235 (first degree murder or second degree murder);

(*b*) section 239 (attempt to commit murder);

(*c*) section 232, 234 or 236 (manslaughter); or

(*d*) section 273 (aggravated sexual assault).

(3) Subsection 2(1) of the Act is amended by adding the following in alphabetical order:

"serious offence" means an indictable offence under an Act of Parliament for which the maximum punishment is imprisonment for five years or more.

"violent offence" means

(*a*) an offence committed by a young person that includes as an element the causing of bodily harm;

(*b*) an attempt or a threat to commit an offence referred to in paragraph (a); or

(c) an offence in the commission of which a young person endangers the life or safety of another person by creating a substantial likelihood of causing bodily harm.

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CLAUSE 167

SUBJECT AND EFFECT:

The definition "presumptive offence" in subsection 2(1) of the Act is repealed.

The definition "serious violent offence" in subsection 2(1) is replaced to mean 1st or 2nd degree murder, attempted murder, manslaughter, or aggravated sexual assault. These offences were part of the definition of "presumptive offence" under the *Youth Criminal Justice Act*.

Subsection 2(1) of the Act is amended by adding two new definitions of "serious offence" and "violent offence".

REASON FOR CHANGE:

In May 2008, the Supreme Court of Canada ruled in *R.* v. *D.B.* that certain provisions of the *Youth Criminal Justice Act*, which placed an onus on young persons found guilty of presumptive offences to justify receiving a youth sentence rather than an adult sentence and to justify the continued protection of their privacy, violated section 7 of the *Charter.* As a result of this decision, the entire presumptive offences regime is being repealed.

A definition of "serious offence" is added as it will form one category of offence for which pre-trial detention may be ordered under Clause 169. The definition is consistent with subsection 467.1(1) of the *Criminal Code.*

The *Youth Criminal Justice Act* does not currently have a definition of "violent offence", but the term, which appears in the Act, has been interpreted by the courts. A definition of "violent offence" is added which will expand the current meaning attributed to the term by the Supreme Court of Canada in *R.* v. *C.D.*; *R.* v. *C.D.K.* (2005), which interpreted "violent offence" as an offence where the young person causes, attempts to cause or threatens to cause bodily harm. The proposed definition will expand the meaning of violent offence to include offences that could endanger the life or safety of another person.

RELATED CLAUSES:

Clause 169, 170, 174, 175, 176, 177, 178, 179, 180, 181, 182, 184, 187, 188, 189 and 192

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CLAUSE 168 (as passed by the House of Commons)

PRESENT PARAGRAPHS

3. (1) The following principles apply in this Act:

(*a*) the youth criminal justice system is intended to

(i) prevent crime by addressing the circumstances underlying a young person's offending behaviour,

(ii) rehabilitate young persons who commit offences and reintegrate them into society, and

(iii) ensure that a young person is subject to meaningful consequences for his or her offence in order to promote the long-term protection of the public;

(*b*) the criminal justice system for young persons must be separate from that of adults and emphasize the following:

PROPOSED AMENDMENTS

168. (1) Paragraph 3(1)(*a*) of the Act is replaced by the following:

(*a*) the youth criminal justice system is intended to <u>protect the public by</u>

(i) holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person,

(ii) promoting the rehabilitation and reintegration of young persons who have committed offences, and

(iii) supporting the prevention of crime by referring young persons to programs or agencies in the community to address the circumstances underlying their offending behaviour;

(2) The portion of paragraph 3(1)(*b*) of the Act before subparagraph (i) is replaced by the following:

(*b*) the criminal justice system for young persons must be separate from that of adults, <u>must be based on the principle of diminished moral blameworthiness or culpability</u> and <u>must</u> emphasize the following:

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CLAUSE 168 (as passed by the House of Commons)

SUBJECT AND EFFECT

Paragraph 3(1)(a) of the Act is replaced. The general principles would now emphasize that the youth criminal justice system is intended to protect the public by holding young persons accountable, promoting their rehabilitation and reintegration, and supporting the prevention of crime.

Under the current *Youth Criminal Justice Act* provisions, the long-term protection of society is set out as an objective. This clause would put more emphasis on the protection of society by moving it and by removing the reference to "long-term".

Paragraph 3(1)(b) of the Act now incorporates the principle of "diminished moral blameworthiness or culpability" when dealing with young persons in conflict with the law.

REASON FOR CHANGE

The change to paragraph 3(1)(a) responds to Recommendation 20 of the Nunn Commission Report and provides that more consideration is to be given to the "protection of the public" when dealing with young persons in conflict with the law.

The change to paragraph 3(1)(b) implements the notion of "diminished moral blameworthiness or culpability" on the part of young persons in conflict with the law. This notion was articulated by the Supreme Court of Canada in *R.* v. *D.B.* as a fundamental principle of justice.

An amendment made in the House of Commons changed the wording in the French version of 3(1)(a)(ii) from "encourager la réadaptation et la réinsertion sociale" to "favoriser la réadaptation et la réinsertion sociale"

RELATED CLAUSE

None

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CLAUSE 169

PRESENT SUBSECTION

29. (2) In considering whether the detention of a young person is necessary for the protection or safety of the public under paragraph 515(10)(*b*) (substantial likelihood — commit an offence or interfere with the administration of justice) of the *Criminal Code*, a youth justice court or a justice shall presume that detention is not necessary under that paragraph if the young person could not, on being found guilty, be committed to custody on the grounds set out in paragraphs 39(1)(*a*) to (*c*) (restrictions on committal to custody).

PROPOSED AMENDMENTS

169. Subsection 29(2) of the Act is replaced by the following:

(2) A youth justice court judge or a justice may order that a young person be detained in custody only if

(*a*) the young person has been charged with

(i) a serious offence, or

(ii) an offence other than a serious offence, if they have a history that indicates a pattern of either outstanding charges or findings of guilt;

(*b*) the judge or justice is satisfied, on a balance of probabilities,

(i) that there is a substantial likelihood that, before being dealt with according to law, the young person will not appear in court when required by law to do so,

(ii) that detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, having regard to all the circumstances including a substantial likelihood that the young person will, if released from custody, commit a serious offence, or

(iii) in the case where the young person has been charged with a serious offence and detention is not justified under subparagraph (i) or (ii), that there are exceptional circumstances that warrant detention and that detention is necessary to maintain confidence in the administration of justice, having regard to the principles set out in section 3 and to all the circumstances, including

(A) the apparent strength of the prosecution's case,

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(B) the gravity of the offence,

(C) the circumstances surrounding the commission of the offence, including whether a firearm was used, and

(D) the fact that the young person is liable, on being found guilty, for a potentially lengthy custodial sentence; and

(*c*) the judge or justice is satisfied, on a balance of probabilities, that no condition or combination of conditions of release would, depending on the justification on which the judge or justice relies under paragraph (*b*),

(i) reduce, to a level below substantial, the likelihood that the young person would not appear in court when required by law to do so,

(ii) offer adequate protection to the public from the risk that the young person might otherwise present, or

(iii) maintain confidence in the administration of justice.

(3) The onus of satisfying the youth justice court judge or the justice as to the matters referred to in subsection (2) is on the Attorney General.

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CLAUSE 169

SUBJECT AND EFFECT

Subsection 29(2) of the Act is replaced. The test for pretrial detention is now self-contained in the *Youth Criminal Justice Act* and provides for the detention of young persons who have been charged with serious offences (as per the new definition in Clause 167 which is consistent with subsection 467.1(1) of the *Criminal Code*), or offences other than serious offences where the young person's history indicates a pattern of either outstanding charges or findings of guilt.

To order detention in these circumstances, the judge/justice must be satisfied that there is a substantial likelihood that the young person will not appear in court when required, that detention is necessary for the protection or safety of the public, or only in the case of a serious offence, that the circumstances are exceptional and detention is necessary to maintain confidence in the administration of justice. Furthermore, the judge/justice must be satisfied that no conditions or combination of conditions would sufficiently alleviate the concerns related to the potential non-appearance, public safety, or maintenance of confidence in the administration of justice.

There is no longer a presumption against pretrial detention on the basis that a young person could not, upon being found guilty, be committed to custody under the Act.

REASON FOR CHANGE

The changes to subsection 29(2) reduce the complexity of the current *Youth Criminal Justice Act* subsection by eliminating the need to refer to section 515 of the *Criminal Code*, allow for detention to be ordered in a broader range of circumstances, and eliminate the presumption that a young person should not be detained at the pre-trial stage, if they could not, upon being found guilty of an offence, be sentenced to custody.

RELATED CLAUSE

Clause 167

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CLAUSE 170

PRESENT SUBSECTION

32. (1) A young person against whom an information or indictment is laid must first appear before a youth justice court judge or a justice, and the judge or justice shall
...

(*d*) if the young person is charged with having committed an offence set out in paragraph (*a*) of the definition "presumptive offence" in subsection 2(1), inform the young person in the following words of the consequences of being charged with such an offence:

An adult sentence will be imposed if you are found guilty unless the court orders that you are not liable to an adult sentence and that a youth sentence must be imposed.

PROPOSED AMENDMENTS

170. Subsection 32(1) of the Act is amended by striking out "and" at the end of paragraph (*c*), by adding "and" at the end of paragraph (*b*) and by repealing paragraph (*d*).

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CLAUSE 170

SUBJECT AND EFFECT

Paragraph 32(1)(d) is repealed because it related to presumptive offences, the definition of which was repealed by Clause 167.

REASON FOR CHANGE

In May 2008, the Supreme Court of Canada ruled in *R.* v. *D.B.* that certain provisions of the *Youth Criminal Justice Act*, which placed an onus on young persons found guilty of presumptive offences to justify receiving a youth sentence rather than an adult sentence and to justify the continued protection of their privacy, violated section 7 of the *Charter.*

The Bill removes all provisions related to presumptive offences. The *Youth Criminal Justice act* continues to provide for adult sentences upon Crown application.

RELATED CLAUSE

Clause 167

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 171

PRESENT SUBSECTION

37. (4) A judicial determination under subsection 42(9) (judicial determination of serious violent offence), or an order under subsection 72(1) (court order — adult or youth sentence), 75(3) (ban on publication) or 76(1) (placement when subject to adult sentence), may be appealed as part of the sentence and, unless the court to which the appeal is taken otherwise orders, if more than one of these is appealed they must be part of the same appeal proceeding.

PROPOSED AMENDMENTS

171. Subsection 37(4) of the Act is replaced by the following:

(4) An order under subsection 72(1) or (1.1) (adult or youth sentence), 75(2) (lifting of ban on publication) or 76(1) (placement when subject to adult sentence) may be appealed as part of the sentence and, unless the court to which the appeal is taken otherwise orders, if more than one of these is appealed they must be part of the same appeal proceeding.

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CLAUSE 171

SUBJECT AND EFFECT

Subsection 37(4) is replaced. This amendment adjusts the wording of the subsection to correspond with other amendments made. Reference to subsection 42(9) has been removed as subsection 42(9) is repealed by subsection (4) of Clause 174. Reference to subsection 72(1.1) has been added as section 72 has been restructured by Clause 183. Reference to subsection 75(2) has been added and reference to subsection 75(3) has been removed because section 75 is replaced by Clause 185.

REASON FOR CHANGE

In May 2008, the Supreme Court of Canada ruled in *R.* v. *D.B.* that certain provisions of the *Youth Criminal Justice Act*, which placed an onus on young persons found guilty of presumptive offences to justify receiving a youth sentence rather than an adult sentence and to justify the continued protection of their privacy, violated section 7 of the *Charter.*

The Bill removes all provisions related to presumptive offences. The *Youth Criminal Justice Act* continues to provide for adult sentences upon Crown application.

RELATED CLAUSES

Clauses 174, 183 and 185

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CLAUSE 172

PRESENT SUBSECTION

38. (2) A youth justice court that imposes a youth sentence on a young person shall determine the sentence in accordance with the principles set out in section 3 and the following principles:

PROPOSED AMENDMENTS

172. Subsection 38(2) of the Act is amended by striking out "and" at the end of paragraph (*d*), by adding "and" at the end of paragraph (*e*) and by adding the following after paragraph (*e*):

(*f*) subject to paragraph (*c*), the sentence may have the following objectives:

(i) to denounce unlawful conduct, and

(ii) to deter the young person from committing offences.

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CLAUSE 172

SUBJECT AND EFFECT

Subsection 38(2) is amended to add specific deterrence and denunciation to the sentencing principles in the Act. The sentence imposed by the judge would have as objectives to denounce the conduct and specifically deter the young person from committing further offences. Such objectives are subject to the principle that the sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence.

REASON FOR CHANGE

The addition of specific deterrence and denunciation to the sentencing principles is intended to increase confidence in the youth justice system, address the concerns that the justice system is too soft on youth crime, and provide the courts with tools to ensure that youth sentences are proportionate to the seriousness of the offence and the degree of responsibility of the offender.

RELATED CLAUSE

None

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CLAUSE 173

PRESENT PARAGRAPH

39. (1) A youth justice court shall not commit a young person to custody under section 42 (youth sentences) unless
...

(*c*) the young person has committed an indictable offence for which an adult would be liable to imprisonment for a term of more than two years and has a history that indicates a pattern of findings of guilt under this Act or the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985; or

PROPOSED AMENDMENTS

173. Paragraph 39(1)(*c*) of the Act is replaced by the following:

(*c*) the young person has committed an indictable offence for which an adult would be liable to imprisonment for a term of more than two years and has a history that indicates a pattern of either extrajudicial sanctions or of findings of guilt or of both under this Act or the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985; or

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CLAUSE 173

SUBJECT AND EFFECT

Paragraph 39(1)(c) of the Act is replaced. The amendment adds extrajudicial sanctions to findings of guilt as considerations in establishing a pattern for the purposes of liability to imprisonment.

Paragraph 39(1)(c) previously required the establishment of a history that indicated a pattern of findings of guilt under the *Young Criminal Justice Act* or *Young Offender Act*, in order for the young person to be liable to imprisonment. The history can now include extrajudicial sanctions such that if there is a pattern of extrajudicial sanctions or findings of guilt, the young person could be liable to imprisonment.

REASON FOR CHANGE

The change to paragraph 39(1)(*c*) of the *Youth Criminal Justice Act* responds to Recommendation 22 of the Nunn Commission Report and serves to ease current restrictions and broaden the range of circumstances for which custodial sentences are available.

RELATED CLAUSE

None

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CLAUSE 174

PRESENT PARAGRAPHS, SUBPARAGRAPHS & SUBSECTIONS

42. (2) When a youth justice court finds a young person guilty of an offence and is imposing a youth sentence, the court shall, subject to this section, impose any one of the following sanctions or any number of them that are not inconsistent with each other and, if the offence is first degree murder or second degree murder within the meaning of section 231 of the *Criminal Code*, the court shall impose a sanction set out in paragraph (*q*) or subparagraph (*r*)(ii) or (iii) and may impose any other of the sanctions set out in this subsection that the court considers appropriate:

...

(*o*) in the case of an offence set out in subparagraph (*a*)(ii), (iii) or (iv) of the definition "presumptive offence" in subsection 2(1), make a custody and supervision order in respect of the young person for a specified period not exceeding three years from the date of committal that orders the young person to be committed into a continuous period of custody for the first portion of the sentence and, subject to subsection 104(1) (continuation of custody), to serve the remainder of the sentence under conditional supervision in the community in accordance with section 105;

...

42. (5) The court may make a deferred custody and supervision order under paragraph (2)(*p*) if

(*a*) the young person is found guilty of an offence that is not a serious violent offence; and

...

42. (7) A youth justice court may make an intensive rehabilitative custody and supervision order under paragraph (2)(r) in respect of a young person only if

(*a*) either

(i) the young person has been found guilty of an offence under one of the following provisions of the Criminal Code, namely, section 231 or 235 (first degree murder or second degree murder within the meaning of section 231), section 239 (attempt to commit murder), section 232, 234 or 236 (manslaughter) or section 273 (aggravated sexual assault), or

(ii) the young person has been found guilty of a serious violent offence for which an adult is liable to imprisonment for a term of more than two years, and the young person had previously been found guilty at least twice of a serious violent offence;

...

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42. (9) On application of the Attorney General after a young person is found guilty of an offence, and after giving both parties an opportunity to be heard, the youth justice court may make a judicial determination that the offence is a serious violent offence and endorse the information or indictment accordingly.

…

42. (10) For the purposes of an appeal in accordance with section 37, a determination under subsection (9) is part of the sentence.

PROPOSED AMENDMENTS

174. (1) Paragraph 42(2)(*o*) of the Act is replaced by the following:

(*o*) in the case of an offence set out in section 239 (attempt to commit murder), 232, 234 or 236 (manslaughter), or 273 (aggravated sexual assault) of the *Criminal Code*, make a custody and supervision order in respect of the young person for a specified period not exceeding three years from the date of committal that orders the young person to be committed into a continuous period of custody for the first portion of the sentence and, subject to subsection 104(1) (continuation of custody), to serve the remainder of the sentence under conditional supervision in the community in accordance with section 105;

(2) Paragraph 42(5)(*a*) of the Act is replaced by the following:

(*a*) the young person is found guilty of an offence other than one in the commission of which a young person causes or attempts to cause serious bodily harm; and

(3) Subparagraphs 42(7)(*a*)(i) and (ii) of the Act are replaced by the following:

(i) the young person has been found guilty of a serious violent offence, or

(ii) the young person has been found guilty of an offence, in the commission of which the young person caused or attempted to cause serious bodily harm and for which an adult is liable to imprisonment for a term of more than two years, and the young person had previously been found guilty at least twice of such an offence;

(4) Subsections 42(9) and (10) of the Act are repealed.

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CLAUSE 174

SUBJECT AND EFFECT

Paragraph 42(2)(o) is replaced. The amendment adjusts the wording of the section to correspond with other proposed amendments. Paragraph 42(2)(o) now specifically refers to the *Criminal Code* offences that used to be defined under paragraph (a) of the definition of "presumptive offences" in subsection 2(1) of the Act.

Paragraph 42(5)(a) is replaced as are subparagraphs 42(7)(a)(i) and (ii). The amendments adjust the wording of these provisions to correspond with other proposed amendments.

While the new definition of "serious violent offence" has been narrowed by Clause 167, paragraph 42(5)(a) has been amended such that the current definition of "serious violent offence" in the *Youth Criminal Justice Act* will continue to be used to determine whether a young person is eligible for a deferred custody and supervision order. Subparagraphs 42(7)(a)(i) and (ii) have been amended to ensure that current parameters for the use of intensive rehabilitative custody and supervision orders are retained.

Subsections 42(9) and (10) are repealed. Subsection 42(9) allowed the court to make a judicial determination that an offence was a serious violent offence. Such determinations were used in the context of "presumptive (b)" offences.

REASON FOR CHANGE

In May 2008, the Supreme Court of Canada ruled in *R.* v. *D.B.* that certain provisions of the *Youth Criminal Justice Act*, which placed an onus on young persons found guilty of presumptive offences to justify receiving a youth sentence rather than an adult sentence and to justify the continued protection of their privacy, violated section 7 of the *Charter*.

The Bill removes all provisions related to presumptive offences. The *Youth Criminal Justice Act* continues to provide for adult sentences upon Crown application.

RELATED CLAUSE

Clause 167

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CLAUSE 175

PRESENT SECTIONS

61. The lieutenant governor in council of a province may by order fix an age greater than fourteen years but not more than sixteen years for the purpose of the application of the provisions of this Act relating to presumptive offences.

62. An adult sentence shall be imposed on a young person who is found guilty of an indictable offence for which an adult is liable to imprisonment for a term of more than two years in the following cases:

(*a*) in the case of a presumptive offence, if the youth justice court makes an order under subsection 70(2) or paragraph 72(1)(*b*); or

(*b*) in any other case, if the youth justice court makes an order under subsection 64(5) or paragraph 72(1)(*b*) in relation to an offence committed after the young person attained the age of fourteen years.

63. (1) A young person who is charged with, or found guilty of, a presumptive offence may, at any time before evidence is called as to sentence or, where no evidence is called, before submissions are made as to sentence, make an application for an order that he or she is not liable to an adult sentence and that a youth sentence must be imposed.

(2) If the Attorney General gives notice to the youth justice court that the Attorney General does not oppose the application, the youth justice court shall, without a hearing, order that the young person, if found guilty, is not liable to an adult sentence and that a youth sentence must be imposed.

PROPOSED AMENDMENTS

175. Sections 61 to 63 of the Act are repealed.

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CLAUSE 175

SUBJECT AND EFFECT

Sections 61 to 63 are repealed as they pertained to presumptive offences, the definition of which was repealed by Clause 167.

REASON FOR CHANGE

In May 2008, the Supreme Court of Canada ruled in *R.* v. *D.B.* that certain provisions of the *Youth Criminal Justice Act*, which placed an onus on young persons found guilty of presumptive offences to justify receiving a youth sentence rather than an adult sentence and to justify the continued protection of their privacy, violated section 7 of the *Charter.*

The Bill removes all provisions related to presumptive offences. The *Youth Criminal Justice Act* continues to provide for adult sentences upon Crown application.

RELATED CLAUSES

CLAUSE 167, 182 and 187

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CLAUSE 176

PRESENT SUBSECTIONS

64. (1) The Attorney General may, following an application under subsection 42(9) (judicial determination of serious violent offence), if any is made, and before evidence is called as to sentence or, where no evidence is called, before submissions are made as to sentence, make an application for an order that a young person is liable to an adult sentence if the young person is or has been found guilty of an offence, other than a presumptive offence, for which an adult is liable to imprisonment for a term of more than two years, that was committed after the young person attained the age of fourteen years.

(2) If the Attorney General intends to seek an adult sentence for an offence by making an application under subsection (1), or by establishing that the offence is a presumptive offence within the meaning of paragraph (*b*) of the definition "presumptive offence" in subsection 2(1), the Attorney General shall, before the young person enters a plea or with leave of the youth justice court before the commencement of the trial, give notice to the young person and the youth justice court of the intention to seek an adult sentence.

…

(4) If a young person is charged with an offence, other than an offence set out in paragraph (*a*) of the definition "presumptive offence" in subsection 2(1), and the Attorney General intends to establish, after a finding of guilt, that the offence is a serious violent offence and a presumptive offence within the meaning of paragraph (*b*) of the definition "presumptive offence" in subsection 2(1) for which the young person is liable to an adult sentence, the Attorney General shall, before the young person enters a plea or, with leave of the youth justice court under subsection (2), before the commencement of the trial, give notice of that intention to the young person.

(5) If the young person gives notice to the youth justice court that the young person does not oppose the application for an adult sentence, the youth justice court shall, without a hearing, order that if the young person is found guilty of an offence for which an adult is liable to imprisonment for a term of more than two years, an adult sentence must be imposed.

PROPOSED AMENDMENTS

176. (1) Subsections 64(1) and (2) of the Act are replaced by the following:

64. (1) The Attorney General may, before evidence is called as to sentence or, if no evidence is called, before submissions are made as to sentence, make an application to

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the youth justice court for an order that a young person is liable to an adult sentence if the young person is or has been found guilty of an offence for which an adult is liable to imprisonment for a term of more than two years and that was committed after the young person attained the age of 14 years.

(1.1) The Attorney General must consider whether it would be appropriate to make an application under subsection (1) if the offence is a serious violent offence and was committed after the young person attained the age of 14 years. If, in those circumstances, the Attorney General decides not to make an application, the Attorney General shall advise the youth justice court before the young person enters a plea or with leave of the court before the commencement of the trial.

(1.2) The lieutenant governor in council of a province may by order fix an age greater than 14 years but not greater than 16 years for the purpose of subsection (1.1).

(2) If the Attorney General intends to seek an adult sentence for an offence by making an application under subsection (1), the Attorney General shall, before the young person enters a plea or with leave of the youth justice court before the commencement of the trial, give notice to the young person and the youth justice court of the intention to seek an adult sentence.

(2) Subsections 64(4) and (5) of the Act are repealed.

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CLAUSE 176

SUBJECT AND EFFECT

Subsections 64(1) and (2) of the Act are replaced. The amendment adjusts the wording of these subsections to correspond with other amendments. It also creates a new obligation on the Crown prosecutor to consider applying for an adult sentence in certain situations.

References to judicial determinations under subsection 42(9) and presumptive offences have been removed from subsections 64(1) and 64(2) as a result of the repeal of presumptive offences.

Subsection 64(1.1) is new and creates an obligation on the Crown to consider applying for an adult sentence where a young person 14 or older has committed a serious violent offence. The Crown prosecutor is required to advise the court if such an application will not be made.

Subsection 64(1.2) is new and grants discretion for a province or territory to set the age at 15 or 16 for the purposes of subsection 64(1.1).

Subsections 64(4) and (5) are repealed because they pertained to presumptive offences which has been repealed.

REASON FOR CHANGE

In May 2008, the Supreme Court of Canada ruled in *R.* v. *D.B.* that certain provisions of the *Youth Criminal Justice Act*, which placed an onus on young persons found guilty of presumptive offences to justify receiving a youth sentence rather than an adult sentence and to justify the continued protection of their privacy, violated section 7 of the *Charter*.

The Bill removes all provisions related to presumptive offences. The *Youth Criminal Justice Act* continues to provide for adult sentences upon Crown application.

RELATED CLAUSES

Clause 167 and 174

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 177

PRESENT SECTIONS

65. If the Attorney General at any stage of proceedings gives notice to the youth justice court that an adult sentence will not be sought in respect of a young person who is alleged to have committed an offence set out in paragraph (*a*) of the definition "presumptive offence" in subsection 2(1), the court shall order that the young person is not liable to an adult sentence, and the court shall order a ban on publication of information that would identify the young person as having been dealt with under this Act.

66. If the youth justice court has made an order under subsection 63(2) or section 65 before a young person is required to be put to an election under section 67, the young person shall not be put to an election unless the young person is alleged to have committed first degree murder or second degree murder within the meaning of section 231 of the *Criminal Code*.

PROPOSED AMENDMENTS

177. Sections 65 and 66 of the Act are repealed.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 177

SUBJECT AND EFFECT:

Sections 65 and 66 of the Act are repealed because they pertained to presumptive offences, the definition of which was repealed by Clause 167.

REASON FOR CHANGE:

In May 2008, the Supreme Court of Canada ruled in *R.* v. *D.B.* that certain provisions of the *Youth Criminal Justice Act*, which placed an onus on young persons found guilty of presumptive offences to justify receiving a youth sentence rather than an adult sentence and to justify the continued protection of their privacy, violated section 7 of the *Charter*.

The Bill removes all provisions related to presumptive offences. The *Youth Criminal Justice Act* continues to provide for adult sentences upon Crown application.

RELATED CLAUSES:

Clause 167, 178 and 187

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 178

PRESENT SUBSECTIONS

67. (1) Subject to section 66, the youth justice court shall, before a young person enters a plea, put the young person to his or her election in the words set out in subsection (2) if

(*a*) the young person is charged with having committed an offence set out in paragraph (*a*) of the definition "presumptive offence" in subsection 2(1);

…

(3) Subject to section 66, in respect of proceedings in Nunavut, the youth justice court shall, before a young person enters a plea, put the young person to his or her election in the words set out in subsection (4) if

(*a*) the young person is charged with having committed an offence set out in paragraph (*a*) of the definition "presumptive offence" in subsection 2(1);

PROPOSED AMENDMENTS

178. (1) The portion of subsection 67(1) of the Act before paragraph (*b*) is replaced by the following:

67. (1) The youth justice court shall, before a young person enters a plea, put the young person to his or her election in the words set out in subsection (2) if

(2) The portion of subsection 67(3) of the Act before paragraph (*b*) is replaced by the following:

(3) In respect of proceedings in Nunavut, the youth justice court shall, before a young person enters a plea, put the young person to his or her election in the words set out in subsection (4) if

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 178

SUBJECT AND EFFECT

Subsection 67(1) is amended to adjust the wording of this subsection to correspond with other amendments. Reference to section 66 has been removed because that section has been repealed. Paragraph 67(1)(a) has been removed since it pertained to presumptive offences, the definition of which was repealed by Clause 167.

Subsection 67(3) is amended to adjust the wording of this subsection to correspond with other amendments. Reference to section 66 has been removed as that section has been repealed. Paragraph 67(3)(a) has been removed because it pertained to presumptive offences, the definition of which was repealed by Clause 167.

REASON FOR CHANGE

In May 2008, the Supreme Court of Canada ruled in *R.* v. *D.B.* that certain provisions of the *Youth Criminal Justice Act*, which placed an onus on young persons found guilty of presumptive offences to justify receiving a youth sentence rather than an adult sentence and to justify the continued protection of their privacy, violated section 7 of the *Charter*.

The Bill removes all provisions related to presumptive offences. The *Youth Criminal Justice Act* continues to provide for adult sentences upon Crown application.

RELATED CLAUSES

Clause 167 and 177

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 179

PRESENT SECTION

68. (1) When a young person is found guilty of an offence, other than an offence set out in paragraph (*a*) of the definition "presumptive offence" in subsection 2(1), committed after he or she attained the age of fourteen years, and the Attorney General seeks to establish that the offence is a serious violent offence and a presumptive offence within the meaning of paragraph (*b*) of the definition "presumptive offence" in subsection 2(1), the Attorney General must satisfy the youth justice court that the young person, before entering a plea, was given notice under subsection 64(4) (intention to prove prior serious violent offences).

(2) If the youth justice court is satisfied that the young person was given notice under subsection 64(4) (intention to prove prior serious violent offences), the Attorney General may make an application in accordance with subsection 42(9) (judicial determination of serious violent offence).

(3) If the youth justice court determines that the offence is a serious violent offence, it shall ask whether the young person admits to the previous judicial determinations of serious violent offences made at different proceedings. If the young person does not admit to any of it, the Attorney General may adduce evidence as proof of the previous judicial determinations in accordance with section 667 of the *Criminal Code*, with any modifications that the circumstances require. For the purposes of that section, a certified copy of the information or indictment endorsed in accordance with subsection 42(9) (judicial determination of serious violent offence) or a certified copy of a court decision is deemed to be a certificate.

(4) If the youth justice court, after making its inquiry under subsection (3), is satisfied that the offence is a presumptive offence within the meaning of paragraph (*b*) of the definition "presumptive offence" in subsection 2(1), the youth justice court shall endorse the information or indictment accordingly.

(5) If the youth justice court, after making its inquiry under subsection (3), is not satisfied that the offence is a presumptive offence within the meaning of paragraph (*b*) of the definition "presumptive offence" in subsection 2(1), the Attorney General may make an application under subsection 64(1) (application for adult sentence).

PROPOSED AMENDMENTS

179. Section 68 of the Act is repealed.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 179

SUBJECT AND EFFECT

Section 68 of the Act is repealed as it pertained to presumptive offences, the definition of which was repealed by Clause 167.

REASON FOR CHANGE

In May 2008, the Supreme Court of Canada ruled in *R.* v. *D.B.* that certain provisions of the *Youth Criminal Justice Act*, which placed an onus on young persons found guilty of presumptive offences to justify receiving a youth sentence rather than an adult sentence and to justify the continued protection of their privacy, violated section 7 of the *Charter*.

The Bill removes all provisions related to presumptive offences. The *Youth Criminal Justice Act* continues to provide for adult sentences upon Crown application.

RELATED CLAUSES

Clause 167 and 180

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 180

PRESENT SUBSECTIONS

69. (1) If a young person who is charged with an offence set out in paragraph (*a*) of the definition "presumptive offence" in subsection 2(1) is found guilty of committing an included offence for which an adult is liable to imprisonment for a term of more than two years, other than another presumptive offence set out in that paragraph,

(a) the Attorney General may make an application under subsection 64(1) (application for adult sentence) without the necessity of giving notice under subsection 64(2), if the finding of guilt is for an offence that is not a presumptive offence; or

(*b*) subsections 68(2) to (5) apply without the necessity of the Attorney General giving notice under subsection 64(2) (intention to seek adult sentence) or (4) (intention to prove prior serious violent offences), if the finding of guilt is for an offence that would be a presumptive offence within the meaning of paragraph (*b*) of the definition "presumptive offence" in subsection 2(1) if a judicial determination is made that the offence is a serious violent offence and on proof of previous judicial determinations of a serious violent offence.

(2) If the Attorney General has given notice under subsection 64(2) of the intention to seek an adult sentence and the young person, after he or she has attained the age of fourteen years, is found guilty of committing an included offence for which an adult is liable to imprisonment for a term of more than two years, the Attorney General may make an application under subsection 64(1) (application for adult sentence) or seek to apply the provisions of section 68.

PROPOSED AMENDMENTS

180. (1) Subsection 69(1) of the Act is repealed.

(2) Subsection 69(2) of the Act is replaced by the following:

(2) If the Attorney General has given notice under subsection 64(2) of the intention to seek an adult sentence and the young person is found guilty of an included offence for which an adult is liable to imprisonment for a term of more than two years, committed after he or she has attained the age of 14 years, the Attorney General may make an application under subsection 64(1) (application for adult sentence).

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 180

SUBJECT AND EFFECT

Subsection 69(1) is repealed because it pertained to presumptive offences, the definition of which was repealed by Clause 167.

Subsection 69(2) is amended to adjust the wording of this subsection to correspond with other amendments. Reference to section 68 has been removed as that section has been repealed.

REASON FOR CHANGE

In May 2008, the Supreme Court of Canada ruled in *R.* v. *D.B.* that certain provisions of the *Youth Criminal Justice Act*, which placed an onus on young persons found guilty of presumptive offences to justify receiving a youth sentence rather than an adult sentence and to justify the continued protection of their privacy, violated section 7 of the *Charter*.

The Bill removes all provisions related to presumptive offences. The *Youth Criminal Justice Act* continues to provide for adult sentences upon Crown application.

RELATED CLAUSES

Clause 167 and 179

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 181

PRESENT SECTION

70. (1) The youth justice court, after hearing an application under subsection 42(9) (judicial determination of serious violent offence), if any is made, and before evidence is called or, where no evidence is called, before submissions are made as to sentence, shall inquire whether a young person wishes to make an application under subsection 63(1) (application for youth sentence) and if so, whether the Attorney General would oppose it, if

(*a*) the young person has been found guilty of a presumptive offence;

(*b*) the young person has not already made an application under subsection 63(1); and

(*c*) no order has been made under section 65 (young person not liable to adult sentence).

(2) If the young person indicates that he or she does not wish to make an application under subsection 63(1) (application for youth sentence) or fails to give an indication, the court shall order that an adult sentence be imposed.

PROPOSED AMENDMENTS

181. Section 70 of the Act is repealed.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 181

SUBJECT AND EFFECT

Section 70 of the Act is repealed because it pertained to presumptive offences, the definition of which was repealed by Clause 167.

REASON FOR CHANGE

In May 2008, the Supreme Court of Canada ruled in *R.* v. *D.B.* that certain provisions of the *Youth Criminal Justice Act*, which placed an onus on young persons found guilty of presumptive offences to justify receiving a youth sentence rather than an adult sentence and to justify the continued protection of their privacy, violated section 7 of the *Charter.*

The Bill removes all provisions related to presumptive offences. The *Youth Criminal Justice Act* continues to provide for adult sentences upon Crown application.

RELATED CLAUSE

Clause 167

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 182

PRESENT SUBSECTION

71. The youth justice court shall, at the commencement of the sentencing hearing, hold a hearing in respect of an application under subsection 63(1) (application for youth sentence) or 64(1) (application for adult sentence), unless the court has received notice that the application is not opposed. Both parties and the parents of the young person shall be given an opportunity to be heard at the hearing.

PROPOSED AMENDMENTS

182. Section 71 of the Act is replaced by the following:

71. The youth justice court shall, at the commencement of the sentencing hearing, hold a hearing in respect of an application under subsection 64(1) (application for adult sentence), unless the court has received notice that the application is not opposed. Both parties and the parents of the young person shall be given an opportunity to be heard at the hearing.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 182

SUBJECT AND EFFECT

Section 71 of the Act is amended to adjust the wording of this subsection to correspond with other amendments. Reference to subsection 63(1) has been removed because that subsection has been repealed.

REASON FOR CHANGE

In May 2008, the Supreme Court of Canada ruled in *R.* v. *D.B.* that certain provisions of the *Youth Criminal Justice Act*, which placed an onus on young persons found guilty of presumptive offences to justify receiving a youth sentence rather than an adult sentence and to justify the continued protection of their privacy, violated section 7 of the *Charter*.

The Bill removes all provisions related to presumptive offences. The *Youth Criminal Justice Act* continues to provide for adult sentences upon Crown application.

RELATED CLAUSE

Clause 167 and 175

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 183

PRESENT SUBSECTIONS

72. (1) In making its decision on an application heard in accordance with section 71, the youth justice court shall consider the seriousness and circumstances of the offence, and the age, maturity, character, background and previous record of the young person and any other factors that the court considers relevant, and

(*a*) if it is of the opinion that a youth sentence imposed in accordance with the purpose and principles set out in subparagraph 3(1)(*b*)(ii) and section 38 would have sufficient length to hold the young person accountable for his or her offending behaviour, it shall order that the young person is not liable to an adult sentence and that a youth sentence must be imposed; and

(*b*) if it is of the opinion that a youth sentence imposed in accordance with the purpose and principles set out in subparagraph 3(1)(*b*)(ii) and section 38 would not have sufficient length to hold the young person accountable for his or her offending behaviour, it shall order that an adult sentence be imposed.

(2) The onus of satisfying the youth justice court as to the matters referred to in subsection (1) is with the applicant.

(3) In making its decision, the youth justice court shall consider a pre-sentence report.

…

(5) For the purposes of an appeal in accordance with section 37, an order under subsection (1) is part of the sentence.

PROPOSED AMENDMENTS

183. (1) Subsections 72(1) to (3) of the Act are replaced by the following:

72. (1) The youth justice court shall order that an adult sentence be imposed if it is satisfied that

(*a*) the presumption of diminished moral blameworthiness or culpability of the young person is rebutted; and

(*b*) a youth sentence imposed in accordance with the purpose and principles set out in subparagraph 3(1)(*b*)(ii) and section 38 would not be of sufficient length to hold the young person accountable for his or her offending behaviour.

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(1.1) If the youth justice court is not satisfied that an order should be made under subsection (1), it shall order that the young person is not liable to an adult sentence and that a youth sentence must be imposed.

(2) The onus of satisfying the youth justice court as to the matters referred to in subsection (1) is on the Attorney General.

(3) In making an order under subsection (1) or (1.1), the youth justice court shall consider the pre-sentence report.

(2) Subsection 72(5) of the Act is replaced by the following:

(5) For the purposes of an appeal in accordance with section 37, an order under subsection (1) or (1.1) is part of the sentence.

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Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 183

SUBJECT AND EFFECT

Subsections 72(1) to (3) are replaced. The amendments create a new test for the imposition of an adult sentence under the Act and puts the onus on the Attorney General to satisfy the court as to the elements of the test.

Subsection 72(5) of the Act is amended to adjust the wording of this subsection to correspond with other amendments. A reference has been made to subsection 72(1.1), which was added in the restructuring of section 72.

REASON FOR CHANGE

A new test for the imposition of an adult sentence was created as a result of the Supreme Court of Canada decision in *R. v. D.B.*. The new test implements the notion of "diminished moral blameworthiness or culpability" on the part of young persons in conflict with the law. This notion was articulated by the Supreme Court of Canada as a fundamental principle of justice.

RELATED CLAUSE

None

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 184

PRESENT SECTION

73. (1) When the youth justice court makes an order under subsection 64(5) or 70(2) or paragraph 72(1)(*b*) in respect of a young person, the court shall, on a finding of guilt, impose an adult sentence on the young person.

(2) When the youth justice court makes an order under subsection 63(2), section 65 or paragraph 72(1)(*a*) in respect of a young person, the court shall, on a finding of guilt, impose a youth sentence on the young person.

PROPOSED AMENDMENTS

184. Section 73 of the Act is replaced by the following:

73. (1) When the youth justice court makes an order under subsection 72(1) in respect of a young person, the court shall, on a finding of guilt, impose an adult sentence on the young person.

(2) When the youth justice court makes an order under subsection 72(1.1) in respect of a young person, the court shall, on a finding of guilt, impose a youth sentence on the young person.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 184

SUBJECT AND EFFECT

Section 73 of the Act is amended to adjust the wording of this section to correspond with other amendments. References to subsections 64(5) and 70(2) have been removed from subsection 73(1) as those subsections have been repealed. References to subsection 63(2) and section 65 have been removed from subsection 73(2) as those provisions have been repealed.

In subsection 73(1), reference is now made to subsection 72(1), and in subsection 73(2), reference is now made to subsection 72(1.1), to coincide with the restructuring of section 72.

REASON FOR CHANGE

In May 2008, the Supreme Court of Canada ruled in *R.* v. *D.B.* that certain provisions of the *Youth Criminal Justice Act*, which placed an onus on young persons found guilty of presumptive offences to justify receiving a youth sentence rather than an adult sentence and to justify the continued protection of their privacy, violated section 7 of the *Charter*.

The Bill removes all provisions related to presumptive offences. The *Youth Criminal Justice Act* continues to provide for adult sentences upon Crown application.

RELATED CLAUSES

Clause 167, 175, 176, 177, 181 and 183

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 185

PRESENT SECTION

75. (1) If the youth justice court imposes a youth sentence in respect of a young person who has been found guilty of having committed a presumptive offence set out in paragraph (*a*) of the definition "presumptive offence" in subsection 2(1), or an offence under paragraph (*b*) of that definition for which the Attorney General has given notice under subsection 64(2) (intention to seek adult sentence), the court shall at the sentencing hearing inquire whether the young person or the Attorney General wishes to make an application under subsection (3) for a ban on publication.

(2) If the young person and the Attorney General both indicate that they do not wish to make an application under subsection (3), the court shall endorse the information or indictment accordingly.

(3) On application of the young person or the Attorney General, a youth justice court may order a ban on publication of information that would identify the young person as having been dealt with under this Act if the court considers it appropriate in the circumstances, taking into account the importance of rehabilitating the young person and the public interest.

(4) For the purposes of an appeal in accordance with section 37, an order under subsection (3) is part of the sentence.

PROPOSED AMENDMENTS

185. Section 75 of the Act is replaced by the following:

75. (1) When the youth justice court imposes a youth sentence on a young person who has been found guilty of a violent offence, the court shall decide whether it is appropriate to make an order lifting the ban on publication of information that would identify the young person as having been dealt with under this Act as referred to in subsection 110(1).

(2) A youth justice court may order a lifting of the ban on publication if the court determines, taking into account the purpose and principles set out in sections 3 and 38, that the young person poses a significant risk of committing another violent offence and the lifting of the ban is necessary to protect the public against that risk.

(3) The onus of satisfying the youth justice court as to the appropriateness of lifting the ban is on the Attorney General.

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(4) For the purposes of an appeal in accordance with section 37, an order under subsection (2) is part of the sentence.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 185

SUBJECT AND EFFECT

Section 75 of the Act is replaced.

The onus of satisfying the court as to the appropriateness of lifting the publication ban now lies with the Crown (amended subsection 75(3)).

The scope of subsection 75(1) has been broadened to require the judge to consider lifting the ban anytime a young person receives a youth sentence for a violent offence. In addition, the definition of "violent offence" proposed in Clause 167 expands the meaning to include offences that could endanger the life or safety of another person.

Subsection 75(2) sets out a new test granting the court the discretion to order a lifting of the ban if it determines, taking into account the principles in sections 3 and 38, that the young person poses a significant risk of committing another violent offence and the lifting of the ban is necessary to protect the public against that risk.

Publication continues to apply whenever an adult sentence is imposed, and section 127 of the *Youth Criminal Justice Act* continues to provide the youth justice court with the authority to disclose specified information in certain circumstances where the young person poses a risk of serious harm to persons.

REASON FOR CHANGE

The Supreme Court of Canada in *R. v. D.B.* struck down the provisions in section 75 of the Act which put the onus on young persons to apply for a publication ban where a youth sentence was imposed for a presumptive offence.

The broadening of the circumstances under which publication bans may be lifted fulfills a 2008 platform commitment to ensure that young offenders who are convicted of very serious and violent crimes will be named upon conviction.

RELATED CLAUSE

Clause 167

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 186

PRESENT SUBSECTION

76. (2) The youth justice court that sentences a young person under subsection (1) shall, unless it is satisfied that to do so would not be in the best interests of the young person or would jeopardize the safety of others,

(*a*) if the young person is under the age of eighteen years at the time that he or she is sentenced, order that he or she be placed in a youth custody facility; and

(*b*) if the young person is eighteen years old or older at the time that he or she is sentenced, order that he or she not be placed in a youth custody facility and order that any portion of the sentence be served in a provincial correctional facility for adults or, if the sentence is two years or more, in a penitentiary.

PROPOSED AMENDMENTS

186. Subsection 76(2) of the Act is replaced by the following:

(2) No young person who is under the age of 18 years is to serve any portion of the imprisonment in a provincial correctional facility for adults or a penitentiary.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 186

SUBJECT AND EFFECT

Clause 186 makes it clear that no young person under 18 is to serve their sentence in an adult institution, regardless of whether they are given an adult or youth sentence. It remains that young persons can, however, be transferred by a youth court to an adult institution at age 18.

REASON FOR CHANGE

This amendment is intended to remove any ambiguity concerning the placement of young persons under 18 who are subjected to a custodial sentence, regardless of whether the custody is imposed as part of an adult sentence. This is consistent with the *United Nations Convention on the Rights of the Child*.

RELATED CLAUSE

None

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 187

PRESENT SUBSECTION

81. An application or a notice to the court under section 63, 64, 65 or 76 must be made or given orally, in the presence of the other party, or in writing with a copy served personally on the other party.

PROPOSED AMENDMENTS

187. Section 81 of the Act is replaced by the following:

81. An application or a notice to the court under section 64 or 76 must be made or given orally, in the presence of the other party, or in writing with a copy served personally on the other party.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 187

SUBJECT AND EFFECT

Section 81 of the Act is amended to adjust the wording to correspond with other amendments. References to sections 63 and 65 have been removed from section 81 as those sections have been repealed.

REASON FOR CHANGE

In May 2008, the Supreme Court of Canada ruled in *R.* v. *D.B.* that certain provisions of the *Youth Criminal Justice Act*, which placed an onus on young persons found guilty of presumptive offences to justify receiving a youth sentence rather than an adult sentence and to justify the continued protection of their privacy, violated section 7 of the *Charter*.

The Bill removes all provisions related to presumptive offences. The *Youth Criminal Justice Act* continues to provide for adult sentences upon Crown application.

RELATED CLAUSES:

Clause 167, 175 and 177

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 188

PRESENT SUBSECTIONS

82. (1) Subject to section 12 (examination as to previous convictions) of the *Canada Evidence Act*, if a young person is found guilty of an offence, and a youth justice court directs under paragraph 42(2)(*b*) that the young person be discharged absolutely, or the youth sentence, or any disposition made under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, has ceased to have effect, other than an order under section 51 (mandatory prohibition order) of this Act or section 20.1 (mandatory prohibition order) of the *Young Offenders Act*, the young person is deemed not to have been found guilty or convicted of the offence except that

...

(*b*) a youth justice court may consider the finding of guilt in considering an application under subsection 63(1) (application for youth sentence) or 64(1) (application for adult sentence);

...

(4) A finding of guilt under this Act is not a previous conviction for the purposes of any offence under any Act of Parliament for which a greater punishment is prescribed by reason of previous convictions, except for

(*a*) the purpose of establishing that an offence is a presumptive offence within the meaning of paragraph (*b*) of the definition "presumptive offence" in subsection 2(1); or

(*b*) the purpose of determining the adult sentence to be imposed.

PROPOSED AMENDMENTS

188. (1) Paragraph 82(1)(*b*) of the Act is replaced by the following:

(*b*) a youth justice court may consider the finding of guilt in considering an application under subsection 64(1) (application for adult sentence);

(2) Paragraph 82(4)(*a*) of the Act is repealed.

(3) Paragraph 82(4)(*b*) of the French version of the Act is replaced by the following:

b) de déterminer la peine applicable aux adultes à imposer.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 188

SUBJECT AND EFFECT

Paragraph 82(1)(b) of the Act is amended to adjust the wording to correspond with other amendments.

Paragraph 82(4)(a) of the Act is repealed because it pertained to presumptive offences, the definition of which was repealed by Clause 167.

Paragraph 82(4)(b) of the French version is replaced. The word "soit" has been removed.

REASON FOR CHANGE

In May 2008, the Supreme Court of Canada ruled in *R.* v. *D.B.* that certain provisions of the *Youth Criminal Justice Act*, which placed an onus on young persons found guilty of presumptive offences to justify receiving a youth sentence rather than an adult sentence and to justify the continued protection of their privacy, violated section 7 of the *Charter*.

The Bill removes all provisions related to presumptive offences. The *Youth Criminal Justice Act* continues to provide for adult sentences upon Crown application.

RELATED CLAUSE

Clause 167 and 175

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 189

PRESENT PARAGRAPH

110. (2) Subsection (1) does not apply

...

(*b*) subject to sections 65 (young person not liable to adult sentence) and 75 (youth sentence imposed despite presumptive offence), in a case where the information relates to a young person who has received a youth sentence for an offence set out in paragraph (a) of the definition "presumptive offence" in subsection 2(1), or an offence set out in paragraph (*b*) of that definition for which the Attorney General has given notice under subsection 64(2) (intention to seek adult sentence); and

PROPOSED AMENDMENTS

189. Paragraph 110(2)(*b*) of the Act is replaced by the following:

(*b*) in a case where the information relates to a young person who has received a youth sentence for a violent offence and the youth justice court has ordered a lifting of the publication ban under subsection 75(2); and

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 189

SUBJECT AND EFFECT

Paragraph 110(2)(b) of the Act is amended to adjust the wording of this paragraph to correspond with other amendments related to the striking down of presumptive offences.

Reference to section 65 of the *Youth Criminal Justice Act* has been removed because it has been repealed by Clause 177. Section 75 of the *Youth Criminal Justice Act* has been replaced by Clause 185. Reference to the definition of "presumptive offence" has been removed.

REASON FOR CHANGE

In May 2008, the Supreme Court of Canada ruled in *R.* v. *D.B.* that certain provisions of the *Youth Criminal Justice Act*, which placed an onus on young persons found guilty of presumptive offences to justify receiving a youth sentence rather than an adult sentence and to justify the continued protection of their privacy, violated section 7 of the *Charter*.

The Bill removes all provisions related to presumptive offences. The *Youth Criminal Justice Act* continues to provide for adult sentences upon Crown application.

RELATED CLAUSES:

Clause 167, 177 and 185

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 190

PRESENT SECTION

115. (1) A record relating to any offence alleged to have been committed by a young person, including the original or a copy of any fingerprints or photographs of the young person, may be kept by any police force responsible for or participating in the investigation of the offence.

(2) When a young person is charged with having committed an offence in respect of which an adult may be subjected to any measurement, process or operation referred to in the *Identification of Criminals Act*, the police force responsible for the investigation of the offence may provide a record relating to the offence to the Royal Canadian Mounted Police. If the young person is found guilty of the offence, the police force shall provide the record.

(3) The Royal Canadian Mounted Police shall keep the records provided under subsection (2) in the central repository that the Commissioner of the Royal Canadian Mounted Police may, from time to time, designate for the purpose of keeping criminal history files or records of offenders or keeping records for the identification of offenders.

PROPOSED AMENDMENTS

190. Section 115 of the Act is amended by adding the following after subsection (1):

(1.1) The police force shall keep a record of any extrajudicial measures that they use to deal with young persons.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 190

SUBJECT AND EFFECT

Subsection 115(1.1) imposes a requirement on police to keep records when extrajudicial measures are used in response to an alleged offence. Typically such measures could include taking no further action, using warnings, cautions, referrals, or sanctions.

REASON FOR CHANGE

This amendment is intended to ensure that police will be better informed of past allegations of offending so that they can take appropriate action in respect of subsequent offence allegations against a particular young person.

RELATED CLAUSE

None

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 191

PRESENT PARAGRAPH

119. (1) Subject to subsections (4) to (6), from the date that a record is created until the end of the applicable period set out in subsection (2), the following persons, on request, shall be given access to a record kept under section 114, and may be given access to a record kept under sections 115 and 116:
…

(*o*) a person, for the purpose of carrying out a criminal record check required by the Government of Canada or the government of a province or a municipality for purposes of employment or the performance of services, with or without remuneration;

PROPOSED AMENDMENTS

191. Paragraph 119(1)(*o*) of the French version of the Act is replaced by the following:

o) toute personne, pour vérifier l'existence d'un casier judiciaire dans le cas où la vérification est exigée par le gouvernement du Canada ou d'une province ou par une municipalité en matière de recrutement de personnel ou de bénévoles ou de fourniture de services;

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 191

SUBJECT AND EFFECT

The amendment to the French paragraph 119(1)(o) adds provincial governments to those who can access a record for the purpose of carrying out a criminal record check.

REASON FOR CHANGE

This is a technical amendment which ensures consistency between the English and French versions of paragraph 119(1)(o). The French version currently omits reference to provincial government.

RELATED CLAUSE

None

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 192

PRESENT PARAGRAPHS

120. (3) For the purposes of subsections (1) and (2), the period of access to a record kept under subsection 115(3) in respect of an offence is the following:

(*a*) if the offence is an indictable offence, other than a presumptive offence, the period starting at the end of the applicable period set out in paragraphs 119(2)(*h*) to (*j*) and ending five years later; and

(b) if the offence is an offence set out in paragraph (*a*) of the definition "presumptive offence" in subsection 2(1) or an offence set out in paragraph (*b*) of that definition for which the Attorney General has given notice under subsection 64(2) (intention to seek adult sentence), the period starting at the end of the applicable period set out in paragraphs 119(2)(*h*) to (*j*) and continuing indefinitely.

PROPOSED AMENDMENTS

192. Paragraphs 120(3)(*a*) and (*b*) of the Act are replaced by the following:

(*a*) if the offence is an indictable offence, other than an offence referred to in paragraph (*b*), the period starting at the end of the applicable period set out in paragraphs 119(2)(*h*) to (*j*) and ending five years later; and

(*b*) if the offence is a serious violent offence for which the Attorney General has given notice under subsection 64(2) (intention to seek adult sentence), the period starting at the end of the applicable period set out in paragraphs 119(2)(*h*) to (*j*) and continuing indefinitely.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 192

SUBJECT AND EFFECT

Paragraphs 120(3)(a) and (b) are amended to adjust the wording to correspond with other amendments. Reference to presumptive offences have been removed from paragraph 120(3)(a). Paragraph 120(3)(b) now refers to "serious violent offence" which has been amended by Clause 167 to mean first or second degree murder, attempted murder, manslaughter, or aggravated sexual assault (these offences were part of the definition of "presumptive offence" under the *Youth Criminal Justice Act*).

REASON FOR CHANGE

In May 2008, the Supreme Court of Canada ruled in *R.* v. *D.B.* that certain provisions of the *Youth Criminal Justice Act*, which placed an onus on young persons found guilty of presumptive offences to justify receiving a youth sentence rather than an adult sentence and to justify the continued protection of their privacy, violated section 7 of the *Charter*.

The Bill removes all provisions related to presumptive offences. The *Youth Criminal Justice Act* continues to provide for adult sentences upon Crown application.

RELATED CLAUSE

Clause 167

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 193

PRESENT SECTION

160. Any person who, before the coming into force of this section, while he or she was a young person, committed an offence in respect of which no proceedings were commenced before the coming into force of this section shall be dealt with under this Act as if the offence occurred after the coming into force of this section, except that

(*a*) paragraph 62(*a*) applies only if the offence is one set out in paragraph (*a*) of the definition "presumptive offence" in subsection 2(1) and the young person was at least sixteen years old at the time of its commission;

(*b*) paragraph 110(2)(*b*) does not apply in respect of the offence; and

(*c*) paragraph 42(2)(*r*) applies in respect of the offence only if the young person consents to its application.

PROPOSED AMENDMENTS

193. Section 160 of the Act is repealed.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 193

SUBJECT AND EFFECT

Section 160 of the Act is repealed.

REASON FOR CHANGE

Clause 195 creates a new transitional provision to deal with persons who committed an offence while a young person, and for which no proceedings were commenced prior to the coming into force of Clause 195.

The new transitional provision reflects the other amendments proposed in this Bill.

RELATED CLAUSE

Clause 195

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 194

PRESENT SECTION

162. For the purposes of sections 158 to 160, proceedings are commenced by the laying of an information or indictment.

PROPOSED AMENDMENTS

194. Section 162 of the Act is replaced by the following:

162. For the purposes of sections 158 and 159, proceedings are commenced by the laying of an information or indictment.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 194

SUBJECT AND EFFECT

Reference to section 160 has been removed as that section has been repealed and replaced with a new transitional provision in Clause 195.

REASON FOR CHANGE

Section 162 is amended to correspond with other amendments – in this case the repeal of section 160.

RELATED CLAUSES

Clause 193 and 195

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 195

PRESENT SUBSECTION

N/A

PROPOSED AMENDMENTS

195. Any person who, before the coming into force of this section, while he or she was a young person, committed an offence in respect of which no proceedings were commenced before the coming into force of this section shall be dealt with under the *Youth Criminal Justice Act* as amended by this Act as if the offence occurred after the coming into force of this section, except that

(*a*) the definition "violent offence" in subsection 2(1) of the *Youth Criminal Justice Act*, as enacted by subsection 167(3), does not apply in respect of the offence;

(*b*) paragraph 3(1)(*a*) of that Act, as enacted by subsection 168(1), does not apply in respect of the offence;

(*c*) paragraph 38(2)(*f*) of that Act, as enacted by section 172, does not apply in respect of the offence;

(*d*) paragraph 39(1)(*c*) of that Act, as enacted by section 173, does not apply in respect of the offence; and

(*e*) section 75 of that Act, as enacted by section 185, does not apply in respect of the offence.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 195

SUBJECT AND EFFECT

Clause 195 creates a transitional provision to deal with persons who committed an offence while a young person, and for which no proceedings were commenced prior to the coming into force of this section.

REASON FOR CHANGE

To clarify which of the provisions in Part 4 will and will not apply to circumstances where the offence was committed by the individual, while a young person, prior to the coming into force of these provisions, where no proceedings had been commenced against the individual under the previous legislation.

RELATED CLAUSES:

Clause 167, 168, 172, 173 and 185

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 196

PRESENT SUBSECTION

2. (1) In this part,

…

"sentence" means a sentence of imprisonment and includes a sentence imposed by a foreign entity on a Canadian offender who has been transferred to Canada under the *International Transfer of Offenders Act* and a youth sentence imposed under the *Youth Criminal Justice Act*;

…

PROPOSED AMENDMENTS

RELATED AMENDMENTS

Corrections and Conditional Release Act

196. The definition "sentence" in subsection 2(1) of the *Corrections and Conditional Release Act* is replaced by the following:

"sentence" means a sentence of imprisonment and includes

(*a*) a sentence imposed by a foreign entity on a Canadian offender who has been transferred to Canada under the *International Transfer of Offenders Act*; and

(*b*) a youth sentence imposed under the *Youth Criminal Justice Act* consisting of a custodial portion and a portion to be served under supervision in the community subject to conditions under paragraph 42(2)(*n*) of that Act or under conditional supervision under paragraph 42(2)(*o*), (*q*) or (*r*) of that Act;

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 196

SUBJECT AND EFFECT

This amendment is to clarify and confirm that when a young person as defined in the *Youth Criminal Justice Act* is transferred to an adult correctional facility pursuant to sections 89, 92 or 93 of that Act, the youth sentence they were serving under paragraphs 42(2)(n), (o), (q) or (r) of that Act is considered to be a sentence under the *Corrections and Conditional Release Act* and is defined as including both the custodial portion and the supervision portion of the youth sentence.

REASON FOR CHANGE

This change was necessitated by the decision of the Federal Court of Appeal in *R. v. J.P.* and that Court's determination that the term "sentence" for the purpose of calculating parole eligibility under the *Corrections and Conditional Release Act* includes only a portion (specifically the custodial portion) of the sentence imposed under section 42 of the *Youth Criminal Justice Act* thereby creating an incentive for young persons to seek transfer to adult correctional facilities.

RELATED CLAUSE

Clause 198

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 197

PRESENT PARAGRAPHS

99. (2) For the purposes of this Part, a reference to the expiration according to law of the sentence of an offender shall be read as a reference to the day on which the sentence expires, without taking into account

(*a*) any period during which the offender could be entitled to statutory release; or

(*b*) any remission that stands to the credit of the offender on the coming into force of this section.

PROPOSED AMENDMENTS

197. Paragraphs 99(2)(*a*) and (*b*) of the Act are replaced by the following:

(*a*) any period during which the offender could be entitled to statutory release;

(*b*) in the case of a youth sentence imposed under the *Youth Criminal Justice Act*, the portion to be served under supervision in the community subject to conditions under paragraph 42(2)(*n*) of that Act or under conditional supervision under paragraph 42(2)(*o*), (*q*) or (*r*) of that Act; or

(*c*) any remission that stands to the credit of the offender on November 1, 1992.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 197

SUBJECT AND EFFECT

This amendment ensures that when the expression "expiration of the sentence according to law" is used in Part II of the *Corrections and Conditional Release Act,* it is read as a reference to the day on which the sentence expires and takes into account the time in custody and on any form of conditional release in the community. This includes the fact that the person may be entitled to statutory release, that they may be under the portion of their youth sentence to be served under supervision in the community or under conditional supervision, or of the remission that stood to their credit on November 1, 1992.

REASON FOR CHANGE

This change was necessitated by the decision of the Federal Court of Appeal in *R. v. J.P.* and that Court's determination that the term "sentence" for the purpose of calculating parole eligibility under the *Corrections and Conditional Release Act* includes only a portion (specifically the custodial portion) of the sentence imposed under section 42 of the *Youth Criminal Justice Act,* thereby creating an incentive for young persons to seek transfer to adult correctional facilities.

RELATED CLAUSE

None

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 198

PRESENT SUBSECTION

2. (1) In this Act,

…

"sentence" includes a youth sentence imposed under the *Youth Criminal Justice Act*.

…

PROPOSED AMENDMENTS

Prisons and Reformatories Act

198. The definition "sentence" in subsection 2(1) of the *Prisons and Reformatories Act* is replaced by the following:

"sentence" includes a youth sentence imposed under the *Youth Criminal Justice Act* consisting of a custodial portion and a portion to be served under supervision in the community subject to conditions under paragraph 42(2)(*n*) of that Act or under conditional supervision under paragraph 42(2)(*o*), (*q*) or (*r*) of that Act.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 198

SUBJECT AND EFFECT

This amendment is to clarify and confirm that when a young person as defined in the *Youth Criminal Justice Act* is transferred to an adult correctional facility pursuant to sections 89, 92 or 93 of that *Act,* the youth sentence they were serving under paragraphs 42(2)(n), (o), (q) or (r) of that Act is considered to be a sentence under the *Prisons and Reformatories Act* and is defined as including both the custodial portion and the supervision portion of the youth sentence.

REASON FOR CHANGE

This change was necessitated by the decision of the Federal Court of Appeal in *R. v. J.P.* and that Court's determination that the term "sentence" for the purpose of calculating parole eligibility under the *Corrections and Conditional Release Act* includes only a portion (specifically the custodial portion) of the sentence imposed under section 42 of the *Youth Criminal Justice Act,* thereby creating an incentive for young persons to seek transfer to adult correctional facilities.

RELATED CLAUSE

Clause 196

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 199

PRESENT SECTION

6. (1) Every prisoner serving a sentence, other than a sentence on conviction for criminal or civil contempt of court where the sentence includes a requirement that the prisoner return to that court, shall be credited with fifteen days of remission of the sentence in respect of each month and with a number of days calculated on a *pro rata* basis in respect of each incomplete month during which the prisoner has earned that remission by obeying prison rules and conditions governing temporary absence and by actively participating in programs, other than full parole, designed to promote prisoners' rehabilitation and reintegration as determined in accordance with any regulations made by the lieutenant governor of the province in which the prisoner is imprisoned.

(7.1) When a prisoner is transferred from a youth custody facility to a prison under section 89, 92 or 93 of the *Youth Criminal Justice Act* or as the result of the application of section 743.5 of the *Criminal Code*, the prisoner is credited with full remission under this section for the portion of the sentence that the offender served in the youth custody facility as if that portion of the sentence had been served in a prison.

(7.2) When a prisoner who was sentenced to custody under paragraph 42(2)(*o*), (*q*) or (*r*) of the *Youth Criminal Justice Act* is transferred from a youth custody facility to a prison under section 92 or 93 of that Act, or is committed to imprisonment in a prison under section 89 of that Act, the prisoner is entitled to be released on the earlier of

(*a*) the date on which the prisoner is entitled to be released from imprisonment in accordance with subsection (5) of this section, and

(*b*) the date on which the custody portion of his or her youth sentence under paragraph 42(2)(*o*), (*q*) or (*r*) of the *Youth Criminal Justice Act* expires.

(7.3) When a prisoner is committed or transferred in accordance with section 89, 92 or 93 of the *Youth Criminal Justice Act* and, in accordance with subsection (7.1) or (7.2) of this section, is entitled to be released,

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Divulgé(s) en vertu de la Loi sur l'accès à l'information.

PROPOSED SECTION

Prisons and Reformatories Act

199. (1) Subsection 6(1) of the Act is replaced by the following:

6. (1) Subject to subsection (7.2), every prisoner serving a sentence, other than a sentence on conviction for criminal or civil contempt of court where the sentence includes a requirement that the prisoner return to that court, shall be credited with 15 days of remission of the sentence in respect of each month and with a number of days calculated on a *pro rata* basis in respect of each incomplete month during which the prisoner has earned that remission by obeying prison rules and conditions governing temporary absence and by actively participating in programs, other than full parole, designed to promote prisoners' rehabilitation and reintegration as determined in accordance with any regulations made by the lieutenant governor of the province in which the prisoner is imprisoned.

(2) Subsections 6(7.1) and (7.2) of the Act are replaced by the following:

(7.1) When a prisoner is transferred from a youth custody facility to a prison as the result of the application of section 743.5 of the *Criminal Code*, the prisoner is credited with full remission under this section for the portion of the sentence that the offender served in the youth custody facility as if that portion of the sentence had been served in a prison.

(7.2) When a prisoner who was sentenced to custody under paragraph 42(2)(*n*), (*o*), (*q*) or (*r*) of the *Youth Criminal Justice Act* is transferred from a youth custody facility to a prison under section 92 or 93 of that Act, or is committed to imprisonment in a prison under section 89 of that Act, the prisoner is entitled to be released on the date on which the custody portion of his or her youth sentence under paragraph 42(2)(*n*), (*o*), (*q*) or (*r*) of that Act expires.

(3) The portion of subsection 6(7.3) of the Act before paragraph (*a*) is replaced by the following:

(7.3) When a prisoner is committed or transferred in accordance with section 89, 92 or 93 of the *Youth Criminal Justice Act* and, in accordance with subsection (7.2) of this section, is entitled to be released,

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 199

SUBJECT AND EFFECT

The purpose of the amendments to section 6 of the *Prisons and Reformatories Act* is to clarify that persons transferred to an adult provincial correctional facility pursuant to sections 89, 92 or 93 of the *Youth Criminal Justice Act* do not earn remission while incarcerated in the prison but that their entitlement for release under supervision is the date on which the custodial portion of their youth sentence would expire.

REASON FOR CHANGE

This change was necessitated by the decision of the Federal Court of Appeal in *R. v. J.P.* and that Court's determination that the term "sentence" for the purpose of calculating parole eligibility under the *Corrections and Conditional Release Act* includes only a portion (specifically the custodial portion) of the sentence imposed under section 42 of the *Youth Criminal Justice Act,* thereby creating an incentive for young persons to seek transfer to adult correctional facilities.

RELATED CLAUSE

None

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 200

PRESENT PARAGRAPH

667. (1) In any proceedings,

(*a*) a certificate setting out with reasonable particularity the conviction or discharge under section 730, the finding of guilt under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, the finding of guilt under the *Youth Criminal Justice Act*, or the judicial determination under subsection 42(9) of that Act, or the conviction and sentence or finding of guilt and sentence in Canada of an offender, signed by

(i) the person who made the conviction, order for the discharge, finding of guilt or judicial determination,

(ii) the clerk of the court in which the conviction, order for the discharge, finding of guilt or judicial determination was made, or

(iii) a fingerprint examiner,

is, on proof that the accused or defendant is the offender referred to in the certificate, evidence that the accused or defendant was so convicted, so discharged or so convicted and sentenced or found guilty and sentenced, or that a judicial determination was made against the accused or defendant, without proof of the signature or the official character of the person appearing to have signed the certificate;

PROPOSED AMENDMENTS

CONSEQUENTIAL AMENDMENTS

Criminal Code

200. Paragraph 667(1)(*a*) of the *Criminal Code* is replaced by the following:

(*a*) a certificate setting out with reasonable particularity the conviction or discharge under section 730, the finding of guilt under the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985, the finding of guilt under the *Youth Criminal Justice Act* or the conviction and sentence or finding of guilt and sentence in Canada of an offender is, on proof that the accused or defendant is the offender referred to in the certificate, evidence that the accused or defendant was so convicted, so discharged or so convicted and sentenced or found guilty and sentenced, without proof of the signature or the official character of the person appearing to have signed the certificate, <u>if it is</u> signed by

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Divulgé(s) en vertu de la Loi sur l'accès à l'information.

(i) the person who made the conviction, order for the discharge or finding of guilt,

(ii) the clerk of the court in which the conviction, order for the discharge or finding of guilt was made, or

(iii) a fingerprint examiner;

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Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 200

SUBJECT AND EFFECT

Clause 200 makes a consequential amendment to paragraph 667(1)(*a*) of the *Criminal Code* by removing reference in that paragraph to subsection 42(9) of the *Youth Criminal Justice Act*, which is repealed by subsection (4) of Clause 174.

REASON FOR CHANGE

In May 2008, the Supreme Court of Canada ruled in *R.* v. *D.B.* that certain provisions of the *Youth Criminal Justice Act*, which placed an onus on young persons found guilty of presumptive offences to justify receiving a youth sentence rather than an adult sentence and to justify the continued protection of their privacy, violated section 7 of the *Charter.*

The Bill removes all provisions related to presumptive offences. The *Youth Criminal Justice Act* continues to provide for adult sentences upon Crown application.

RELATED CLAUSE

Clause 167 and 174

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 201

PRESENT PARAGRAPH

746.1 (2) Subject to subsection (3), in respect of a person sentenced to imprisonment for life without eligibility for parole for a specified number of years pursuant to this Act, until the expiration of all but three years of the specified number of years of imprisonment,
...

(*b*) no absence without escort may be authorized under that Act or the *Prisons and Reformatories Act*; and

PROPOSED AMENDMENTS

201. Paragraph 746.1(2)(*b*) of the French version of the Act is replaced by the following:

b) de permission de sortir sans escorte sous le régime de cette loi ou de la *Loi sur les prisons et les maisons de correction*;

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 201

SUBJECT AND EFFECT

This amendment rectifies an inconsistency between the English text and the French text in paragraph 746.1(2)(b) of the *Criminal Code*.

REASON FOR CHANGE

This amendment corrects and error in the French text of paragraph 746.1(2)(b) of the *Criminal Code* which incorrectly refers to the *Correctional and Conditional Release Act*, instead of the *Prisons and Reformatories Act*.

RELATED CLAUSE

None

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 202

PRESENT SUBSECTION

9.1 (2) Section 9 nevertheless applies to information in the convicted offenders index in relation to

(*a*) a presumptive offence within the meaning of subsection 2(1) of the *Youth Criminal Justice Act*; or

(*b*) a record to which subsection 120(6) of that Act applies.

PROPOSED AMENDMENTS

DNA Identification Act

202. Subsection 9.1(2) of the *DNA Identification Act* is replaced by the following:

(2) Section 9 nevertheless applies to information in the convicted offenders index in relation to

(*a*) a serious violent offence as defined in subsection 2(1) of the *Youth Criminal Justice Act*; or

(*b*) a record to which subsection 120(6) of that Act applies.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 202

SUBJECT AND EFFECT

Clause 202 makes a consequential amendment to subsection 9.1(2) of the *DNA Identification Act* by removing the reference in that subsection to "presumptive offence" and substituting it with "serious violent offence".

The definition of "presumptive offence" in subsection 2(1) of the *Youth Criminal Justice Act* is repealed by subsection (1) of Clause 167.

The definition of "serious violent offence" in subsection 2(1) of the *Youth Criminal Justice Act* is modified by subsection (2) of Clause 167.

REASON FOR CHANGE

In May 2008, the Supreme Court of Canada ruled in *R.* v. *D.B.* that certain provisions of the *Youth Criminal Justice Act*, which placed an onus on young persons found guilty of presumptive offences to justify receiving a youth sentence rather than an adult sentence and to justify the continued protection of their privacy, violated section 7 of the *Charter.*

The Bill removes all provisions related to presumptive offences. The *Youth Criminal Justice Act* continues to provide for adult sentences upon Crown application.

RELATED CLAUSE

Clause 167

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 203

PRESENT SUBSECTION

10.1 (2) Subsections 10(6) and (7) nevertheless apply to the destruction of stored bodily substances of a young person that relate to

(*a*) a presumptive offence within the meaning of subsection 2(1) of the *Youth Criminal Justice Act*; or

(*b*) a record to which subsection 120(6) of that Act applies.

PROPOSED AMENDMENTS

203. Subsection 10.1(2) of the Act is replaced by the following:

(2) Subsections 10(6) and (7) nevertheless apply to the destruction of stored bodily substances of a young person that relate to

(*a*) a serious violent offence as defined in of subsection 2(1) of the *Youth Criminal Justice Act*; or

(*b*) a record to which subsection 120(6) of that Act applies.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 203

SUBJECT AND EFFECT

Clause 203 makes a consequential amendment to subsection 10.1(2) of the *DNA Identification Act* by removing reference in that subsection to "presumptive offence" and substituting it with "serious violent offence".

The definition of "presumptive offence" in subsection 2(1) of the *Youth Criminal Justice Act* is repealed by subsection (1) of Clause 167.

The definition of "serious violent offence" in subsection 2(1) of the *Youth Criminal Justice Act* is modified by subsection (2) of Clause 167.

REASON FOR CHANGE

In May 2008, the Supreme Court of Canada ruled in *R.* v. *D.B.* that certain provisions of the *Youth Criminal Justice Act*, which placed an onus on young persons found guilty of presumptive offences to justify receiving a youth sentence rather than an adult sentence and to justify the continued protection of their privacy, violated section 7 of the *Charter.*

The Bill removes all provisions related to presumptive offences. The *Youth Criminal Justice Act* continues to provide for adult sentences upon Crown application.

RELATED CLAUSE

Clause 167

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 204 (Coming into Force)

PRESENT SECTION

Not applicable

PROPOSED SECTION

204. The provisions of this Part come into force on a day or days to be fixed by order of the Governor in Council.

Released under the Access to Information Act /
Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 204 (Coming into Force)

SUBJECT AND EFFECT

This amendment sets out when the provisions of Part 4 will come into force.

REASON

This amendment is required in order to give effect to the provisions of Part 4 at such time as determined by order of the Governor in Council.

RELATED CLAUSES

Clauses 167 to 203

Released under the Access to Information Act /
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CLAUSE 205

PRESENT SUBSECTION

3. (1) The objectives of this act with respect to Immigration are
...

(*h*) to protect the health and safety of Canadians and to maintain the security of Canadian society;

PROPOSED SECTION

IMMIGRATION AND REFUGEE PROTECTION ACT

AMENDMENTS TO THE ACT

3. (1) The objectives of this act with respect to Immigration are
...

(*h*) to protect <u>public</u> health and safety and to maintain the security of Canadian Society;

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CLAUSE 205

SUBJECT AND EFFECT

This subsection establishes, as one of the objectives of the *Immigration and Refugee Protection Act*, the management of the immigration program in such a way as "to protect the health and safety of Canadians and to maintain the security of Canadian society". The amendment will change the reference to the health and safety of Canadians to refer to the health and safety of the public.

REASON FOR CHANGE

This change is made to establish that the Government's objective of protecting health and safety is not limited to the health and safety of Canadian citizens and permanent residents, but is extended to the health and safety of all persons in Canadian society, including foreign nationals who are in this country on a temporary basis.

RELATED CLAUSE

None

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CLAUSE 206

PRESENT SUBSECTION

30. (1) A foreign national may not study or work in Canada unless authorized to do so under this Act.

PROPOSED NEW SUB-SECTIONS

30. (1.1) An officer may, on application, authorize a foreign national to work or study in Canada if they meet the conditions set out the in the regulations.

(1.2) Despite subsection (1.1), the officer shall refuse to authorize the foreign national to work in Canada if, in the officer's opinion, public policy considerations that are specified in the instructions given by the Minister justify such a refusal.

(1.3) In applying subsection (1.2), any refusal to give authorization to work in Canada requires the concurrence of a second officer.

(1.4) The instructions shall prescribe public policy considerations that aim to protect foreign nationals who are at risk of being subjected to humiliating or degrading treatment, including sexual exploitation.

(1.5) The instructions must be published in the *Canada Gazette*.

(1.6) The instructions take effect on the day on which they are published, or on any later day specified in the instruction, and apply to all applications for authorization to work in Canada that were filed before that day and for which a final decision has not been made.

(1.7) The instructions cease to have effect on the day on which a notice of revocation is published in the *Canada Gazette.*

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CLAUSE 206

SUBJECT AND EFFECT

Section 30 (1) of *Immigration and Refugee Protection Act* currently establishes the need for a foreign national to be authorized under *Immigration and Refugee Protection Act* in order to work or study legally in Canada.

Subsection 30 (1.3) of *Immigration and Refugee Protection Act* will require that any refusals under the authority of a Ministerial instruction will be confirmed by a second immigration officer.

Subsection 30 (1.4) of *Immigration and Refugee Protection Act* will require that any instructions issued under this authority will set out the public policy concerns that were the basis of the instructions.

Subsections 30 (1.5 to 1.7) require that Ministerial Instructions issued under this authority must be published in the Canada Gazette, and set out rules respecting the effective period of operation for the instructions.

REASON FOR CHANGE

Section 30 (1) The addition of subsection 1.1 establishes that an immigration officer must authorize a foreign national to work or study if he/she applies for such authorization, and qualifies under the conditions set out in the *Immigration and Refugee Regulations.* However, subsection (1.2) qualifies this by saying that even in cases where the applicant does otherwise qualify for a work permit, the officer can and shall refuse to issue the permit if, in the opinion of the officer,
authorizing the particular applicant under consideration would be contrary to the public policy interests of Canada, as set out in instructions issued by the Minister of Citizenship and Immigration. This authority to refuse work permits to foreign nationals who are otherwise eligible is the crux of this legislation. The public policy interest underlying the Minister's instruction must support the objectives of the *Immigration and Refugee Protection Act*, as found in section 3, and must be supported by evidence.

Subsection 30 (1.3) In acknowledgement that the refusal of a work permit to an applicant otherwise eligible is an exceptional power, the refusal is only effective if two immigration officers agree that the specific case falls within the ambit of the Minister's instruction.

Subsection 30 (1.4) This subsection further defines the concept of "public policy" introduced in subsection (1.2) by limiting the use of instructions to situations where there are concerns that the applicant will be sexually exploited or otherwise humiliated

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or degraded. This qualification more clearly establishes the reason this Bill is being introduced, and limits what might otherwise be seen as an inappropriately broad discretionary power.

Subsection 30 (1.5 to 1.7) Accountability on the part of both the Minister and the Department is an essential element in justifying the exercise of a discretionary authority such as this. Publication in the *Canada Gazette* ensures that any instructions are part of the public record. The instructions cannot take effect prior to their publication date; however, they will be applied to all applications where a final decision has not yet been rendered. Instructions will remain in effect until expressly revoked, again through publication in the *Gazette*.

RELATED CLAUSE

None

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CLAUSE 207

PRESENT SUBSECTION

94. (1) The Minister must, on or before November 1 of each year or, if a House of Parliament is not then sitting, within the next 30 days on which that House is sitting after that date, table in each House of Parliament a report on the operation of this Act in the preceding calendar year.

Contents of report:

(2) The report shall include a description of

(*a*) the activities and initiatives taken concerning the selection of foreign nationals, including measures taken in cooperation with the provinces;

(*b*) in respect of Canada, the number of foreign nationals who became permanent residents, and the number projected to become permanent residents in the following year;

(*b*.1) in respect of Canada, the linguistic profile of foreign nationals who became permanent residents;

(*c*) in respect of each province that has entered into a federal-provincial agreement described in subsection 9(1), the number, for each class listed in the agreement, of persons that became permanent residents and that the province projects will become permanent residents there in the following year;

(*d*) the number of temporary resident permits issued under section 24, categorized according to grounds of inadmissibility, if any;

(e) the number of persons granted permanent resident status under subsection 25(1); and

(*f*) a gender-based analysis of the impact of this Act.

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PROPOSED NEW SUB-SECTIONS

207. Subsection 94(2) of the Act is amended by striking out the word "and" at the end of paragraph (e) and by adding the following after that paragraph:

(*e*.1) any instructions given under subsection 30(1.2) during the year in question and the date of their publication; and

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CLAUSE 207

SUBJECT AND EFFECT

Section 94 of the Act establishes the obligation of the Minister of Citizenship and Immigration to table in Parliament an annual report on the operation of the Act. Subsection (2) sets out items that must be included in that annual report. The addition of paragraph (e.1) to subsection 94(2) requires that any instructions issued during the reporting year be expressly set out in the annual report.

REASON FOR CHANGE

In the further interests of accountability respecting the Minster's exercise of the discretionary authority created by this Bill, instructions will not only be published in the *Canada Gazette* when they are put into effect: they will also be set out in the Minister of Citizenship and Immigration's Annual Report to Parliament, to ensure that not only are any instructions part of the public record, but that they are also expressly brought to the attention of Parliament.

RELATED CLAUSES

None

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CLAUSE 208

PRESENT SECTION

Not applicable

PROPOSED SECTION

208. This Part comes into force on a day to be fixed by order of the Governor in Council.

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Divulgé(s) en vertu de la Loi sur l'accès à l'information.

CLAUSE 208

SUBJECT AND EFFECT

The clause provides for the coming into force of the provisions of Part 5 on a day to be fixed by Order in Council rather than upon Royal Assent.

REASON FOR CHANGE

Ensuring that the amendments will come into force upon proclamation rather than upon Royal Assent will provide an opportunity to prepare to implement these changes.

RELATED CLAUSES

Clauses 205 - 207